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FILED

JAN 25 2016

Federal Maritime Commission
Office of the Secretary

BEFORE THE
FEDERAL MARITIME COMMISSION

Docket No. 16-01

CARGO AGENTS, INC., INTERNATIONAL TRANSPORT MANAGEMENT CORP., and RCL AGENCIES, INC., on behalf of themselves and all others similarly situated,

Complainants,

v.

NIPPON YUSEN KABUSHIKI KAISHA, NYK LINE (NORTH AMERICA) INC., MITSUI O.S.K. LINES, LTD., MITSUI O.S.K. BULK SHIPPING (USA) INC, WORLD LOGISTICS SERVICE (U.S.A.) INC., KAWASAKI KISEN KAISHA, LTD., "K" LINE AMERICA, INC., EUKOR CAR CARRIERS INC., WALLENIUS WILHELMSEN LOGISTICS AS, WALLENIUS WILHELMSEN LOGISTICS AMERICAS LLC, COMPAÑÍA SUD AMERICANA DE VAPORES S.A., CSAV AGENCY NORTH AMERICA, LLC, HÖEGH AUTOLINERS HOLDINGS AS, HÖEGH AUTOLINERS AS, HÖEGH AUTOLINERS, INC., AUTOTRANS AS, ALLIANCE NAVIGATION LLC, and NISSAN MOTOR CAR CARRIER CO., LTD.

Respondents

RESPONDENTS' CONSOLIDATED MOTION TO STAY PROCEEDINGS

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Specially Appearing Respondents Nippon Yusen Kabushiki Kaisha and NYK Line (North America Inc (collectively, "NYK"), EUKOR Car Carriers Inc. ("EUKOR"), Wallenius Wilhelmsen Logistics AS and Wallenius Wilhelmsen Logistics Americas LLC, (collectively, "WWL"), Compañía Sud Americana de Vapores S.A. and CSAV Agency North America, LLC (collectively, "CSAV"), Höegh Autoliners Holdings AS, Höegh Autoliners AS, Höegh Autoliners, Inc., Autotrans AS and Alliance Navigation LLC (collectively, "Höegh"),[1] by and through their respective undersigned counsel, respectfully move for the entry of an order staying proceedings in the above captioned case. Respondents Mitsui O S.K. Lines, Ltd., Mitsui O S.K. Bulk Shipping (USA) Inc., World Logistics Service (U S.A.) Inc. and Nissan Motor Car Carrier Co , Ltd. (collectively "MOL") and Kawasaki Kisen Kaisha, Ltd., and "K" Line America, Inc (collectively, "'K' Line"), through counsel, have entered a general appearance, and also join in this Motion. In support thereof, Specially Appearing Respondents, MOL and "K" Line (collectively, "Respondents") respectfully represent as follows

BACKGROUND

1 Specially Appearing Respondents have entered special appearances before the Commission, limited, in part, to the filing of this Consolidated Motion to Stay Proceedings, MOL and "K" Line have filed separate general appearances and join in this Motion.

2. On June 2, 2014, Complainants Cargo Agents, Inc. and International Transport Management Corp filed their consolidated amended class action complaint as part of a multi-district litigation ("MDL") pending before the Honorable Esther Salas, U S.D.J., in the United States District Court for the District of New Jersey under the caption and docket number *In re Vehicle Carrier Services Antitrust Litigation*, Master Docket No 13-cv-3306, MDL No 2471

[1] NYK, EUKOR, WWL, CSAV and Höegh collectively are referred to as the Specially Appearing Respondents.

(the "class action complaint"), a true and correct copy of the class action complaint is attached hereto as Exhibit "A" and is made a part hereof by reference All of the Respondents in this matter are named as defendants in the class action complaint. Complainant RCL Agencies, Inc. is not a named party plaintiff in the class action complaint, but is a member of the putative class.[2]

3 On August 28, 2015, Judge Salas ordered that the class action complaint be dismissed with prejudice; true and correct copies of the Court's August 28, 2015 opinion and order are collectively attached hereto as Exhibit "B" and are made a part hereof by reference.

4 On September 25, 2015, Complainants Cargo Agents, Inc. and International Transport Management Corp filed a notice of appeal of the Court's August 28, 2015 opinion and order with the United States Court of Appeals for the Third Circuit ("Third Circuit"), which appeal was docketed at No 15-3353, a true and correct copy of that notice of appeal is attached hereto as Exhibit "C" and is made a part hereof by reference.

5 By an order dated October 9, 2015, issued by the Clerk of the Third Circuit, the appeal filed by Complainants Cargo Agents, Inc. and International Transport Management Corp was consolidated with (a) the notice of appeal filed the indirect purchaser plaintiffs/auto dealers (No 15-3354) and (b) the notice of appeal filed by the indirect purchaser/end-payor and truck center plaintiffs (No 15-3355), true and correct copies of the notices of appeal in Nos. 15-3354 and 15-3355 are attached hereto as Exhibits "D" and "E", respectively, and are made a part hereof by reference, and a true and correct copy of the October 9, 2015 consolidation order is attached hereto as Exhibit "F" and is made a part hereof by reference.

6 Also by an order dated October 9, 2015, the Third Circuit stayed proceedings in Nos. 15-3353, 15-3354 and 15-3355 pending the disposition of a motion for reconsideration filed

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[2] Cargo Agents, Inc., International Transport Management Corp and RCL Agencies are collectively referred to as Complainants.

by indirect purchaser/end-payor plaintiffs before Judge Salas, a true and correct copy of that stay order is attached hereto as Exhibit "G" and is made a part hereof by reference.

7 On December 29, 2015, Complainants filed an action styled a "class action complaint" before the Federal Maritime Commission ("Commission"), under the caption and docket number *Cargo Agents, Inc , et al. v Nippon Yusen Kabushiki Kaisha, et al.*, Docket No 16-01 ("Complainants' FMC complaint"), for ease of reference, a true and correct copy of Complainants' FMC complaint is attached hereto as Exhibit "H" and is made a part hereof by reference.

8 Complainants' FMC complaint is based on the same conduct as the class action complaint. It is a protective action. an attempt to preserve all applicable statutes of limitations and other deadlines, including those under the Shipping Act of 1984, during the pendency of their appeal.

9 For the reasons that follow, Respondents respectfully represent that a stay of Complainants' FMC complaint is warranted in the interest of judicial and administrative economy [3]

MOTION FOR A STAY

A. Complainants' complaint before this Commission is a protective action.

10 The class action complaint alleged that Respondents and others violated certain laws arising out of the same facts underlying Complainants' FMC complaint/protective action.

11 "There is nothing necessarily inappropriate about filing a protective action[ ]" *Exxon Mobil Corp v Saudi Basic Indus* , 544 U S 280, 294 and n.9 (2005) *See also Oldfield v*

[3] As required, Respondents have conferred with counsel for Complainants in respect of whether Complainants will consent to the relief sought in this motion for a stay; Complainants have declined to consent.

Augustensen, No 08-1132, 2008 U S Dist. LEXIS 28320, at *3 (D.N.J Apr 7, 2008) (determining propriety of protective action), *Gov't of the Virgin Islands v Neadle*, 861 F Supp. 1054, 1055 (M.D Fla. 1994) (staying action brought by plaintiffs "to protect themselves" in the event personal jurisdiction over defendants failed in first-filed forum)

B. <u>Standards for a motion for a stay</u>.

12. As the Presiding Officer recently stated, "[t]he Commission may grant a request to stay a proceeding, however, the party seeking a stay has the burden to demonstrate the need for the stay " *General Motors LLC v Nippon Yusen Kabushiki Kaisha, et al.*, ___ S.R.R. ___, 2016 WL 232546, *2 (Fed. Mar Comm'n Dkt. No 15008, A.L.J Order, Jan. 5, 2016). The Presiding Officer explained that "[t]he test for evaluating a motion to stay was articulated by Justice Cardozo, who wrote that 'the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.'" *Ibid.* (quoting *Landis v North American Co* , 299 U S 248, 254 (1936)) The Presiding Officer defined the issue thusly· "'the question of whether to grant a motion for stay is discretionary, and requires only a balancing of various competing interests.'" *Ibid.* (quoting *Exclusive Tug Arrangements in Port Canaveral, Florida*, 29 S.R.R. 1020, 1021 (FMC 2002), 2002 WL 31556296, at *2 (Fed. Mar Comm'n Dkt. No 02-03, Comm'n Order, Nov 15, 2002) Procedurally, the Presiding Officer commanded that "the movant must first 'make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to someone else.'" *Ibid.* (quoting *Landis, supra*, 299 U S at 254-55)

13 In *General Motors LLC, supra*, the Presiding Officer instructed that "[t]he Supreme Court addressed the factors to consider when staying a federal proceeding pending the

outcome of a related state court matter[,]" *id.* at 2 (citing *Moses H. Cone Memorial Hospital v Mercury Construction Corp* , 460 U S 1, 14-18 (1983)), stating that "[t]hese factors include 'which court first assumed jurisdiction, the inconvenience of the federal forum, the desirability of avoiding piecemeal litigation, whether state or federal law provides the rule of decision on the merits, the adequacy of the state court to protect the parties' rights, and whether one of the actions has a vexatious or reactive nature.'" *Ibid.* (quoting *Profile Manufacturing, Inc. v Ronald Kress*, 1994 U S App LEXIS 6048, at *7 (Fed. Cir 1994))

14 The Presiding Officer has set forth the standard for the issuance of a stay in the context of a contested motion for a stay In *SSA Terminals, LLC, et al. v The City of Oakland, acting by and through its Board of Port Commissioners*, 32 S.R.R. 107 (ALJ 2010), 2010 WL 8367622 (Fed. Mar Comm'n Dkt. No 09-08, A.L.J Order, Dec 21, 2010), the Presiding Officer noted that "[m]otions to stay are generally evaluated under the factors established in *Virginia Petroleum Jobbers Ass'n v FPC*, 259 F.2d 921, 925 (D C. Cir.1958)." *Id.* at *3 The Presiding Officer listed the factors as

> (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal, (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay
>
> [*Ibid.* (quoting *Wisconsin Gas Co v FERC*, 758 F.2d 669, 673-74 (D C Cir 1985) (citing *Virginia Petroleum Jobbers Ass'n, supra*, 259 F.2d at 925)]

In *SSA Terminals, supra*, the Presiding Officer granted the requested stay over the opposition of the non-moving party

15 An application of the *Profile Manufacturing* and *Virginia Petroleum Jobbers* factors, as adopted by the Presiding Officer in *General Motors LLC, supra* and *SSA Terminals,*

supra, and as supplemented by additional factors also judicially recognized -- that is, the stage of the litigation, whether the non-moving party will be unduly prejudiced or tactically disadvantaged by a stay; and whether a stay will simplify issues, *see Board of Trustees of the Ohio Laborers' Fringe Benefit Programs v O C.I. Construction, Inc* , No 2 10-cv-550, 2011 WL 902246 at *3 (S.D Ohio Mar 14, 2011), *Washington Mutual Bank v Law Office of Robert Jay Gumenick*, 561 F Supp 2d 410 (S.D.N Y 2008); *Auto-Owners Ins Co v Summit Park Townhouse Ass'n*, No 14-cv-3417, 2015 WL 1740818 (D Colo Apr 14, 2015), *Woodman's Food Market, Inc. v Clorox Co* , No 14-cv-734, 2015 WL 4858396 (W.D Wis. Aug. 13, 2015) -- support the grant of a stay Respondents address each of those factors as follows.

C. <u>An application of the standards for a motion for a stay justify the entry of a stay</u>.

16 *The first-filed court/status of the district court litigation.* As the Presiding Officer concluded in *General Motors LLC, supra*, the predecessors to the class action complaint likewise were "the first filed, the parties have already engaged in dispositive motion practice in the district court, and the issues that have been briefed in that proceeding will clarify fundamental questions." *General Motors LLC, supra*, at *3 Staying Complainants' FMC complaint also will "avoid piecemeal and duplicative litigation." *Ibid.* Although neither action can be called vexatious, it is clear that Complainants' FMC complaint is purely reactive· it is a protective action filed before this Commission because, although Complainants' class action complaint was dismissed with prejudice, Complainants nevertheless have sought appellate review of that dismissal, certainly with the goal of having their class action complaint reinstated. In the aggregate, then, this factor favors the entry of a stay *See Signal International, LLC v LeTourneau, Inc.*, No H-07-2915, 2008 WL 239655 (S.D Tex. Jan. 29, 2008) (staying action in favor of earlier filed case)

17 *The convenience of the forum.* No party to this proceeding is a citizen of or maintains its principal place of business in the District of Columbia. In contrast, several of Respondents maintain offices either in the District of New Jersey or in the adjoining State of New York, also, two of the three Complainants are headquartered in New Jersey and the third is headquartered in the adjoining State of New York. This factor too supports a stay

18 *The desirability of avoiding piecemeal litigation.* Duplicative litigation will result if the parties are required to litigate the same issues before the Commission and the U S District Court. The factual allegations asserted in Complainants' FMC complaint are mirror-images of the allegations asserted in the class action complaint. This factor also supports a stay *See In re Groupon Derivative Litigation*, 882 F Supp 2d 1043 (N.D Ill. 2012) (staying action in part to avoid piecemeal litigation and attendant burdens on court and parties)

19 *The law providing the rule of decision.* In the class action complaint, Complainants assert that their claims are governed by federal antitrust law and, in support of that view, Complainants appealed the decision of the U S District Court holding that their claims, if any, are governed by the Shipping Act and must be brought before the Commission. Four months after their claims were dismissed with prejudice by the U S District Court, Complainants filed their FMC complaint, alleging that their claims are governed by the Shipping Act. Yet, wishing to have their cake and eat it too, Complainants have not withdrawn their notice of appeal to the Third Circuit. If Complainants truly believe that the Shipping Act provides the rule of decision, there is an unmistakable way of showing it: they should withdraw their appeal. Until they do so, there is uncertainty as to the law providing the rule of decision. Hence, this factor is not dispositive.

20 *The adequacy of the forum to protect the parties' rights* Both the U S District Court and this Commission will protect the parties' rights and, as a result, this factor is neutral.

21 *Whether one of the actions is vexatious or reactive* Because Complainants' FMC complaint truly attempts to serve as a protective action, it is one that is particularly suited to a stay *See PDL Biopharma, Inc. v Sun Pharmaceutical Industries, Ltd.*, No 07-11709, 2007 WL 2261386 at *2 (E.D Mich. Aug. 6, 2007) (staying second-filed protective action)

22. *Whether the parties or the public interest will be harmed by a stay* No doubt, the parties will benefit from a stay by avoiding costly and time-consuming duplicative litigation. The public interest likewise will benefit from a stay because the time and resources of the U S District Court and the Commission will not be consumed by duplicative litigation. As the Presiding Officer noted in *General Motors LLC, supra*, at *3, "'[u]ltimately, only one of these cases will proceed, nothing is gained, and much is lost, by having the two cases proceed simultaneously ' This factor weighs in favor of a stay "

23 *The Commission's interest in resolving controversies efficiently* Until Complainants truly decide in which forum they will go forward with their allegations -- in the U S District Court after appellate review or before the Commission -- it is both inefficient and wasteful to consume the time and resources of the Commission in this action. A stay is in the best interests of the Commission's adjudicative goals.

24 *The stage of the litigation.* The parties already have engaged in dispositive motion practice in the U S District Court, and Complainants already have filed an appeal before the Third Circuit. Also, two of the Complainants -- Cargo Agents, Inc. and International Transport Management Corp -- filed their own separate U S District Court complaints (on October 11, 2013 and August 30, 2013, respectively), making, at the very least, the "first-filed"

action filed by any of the Complainants one filed twenty-eight months before this action was filed before the Commission. In the interim, nothing -- save for the initial act of filing -- has occurred in Complainants' FMC complaint. This factor too favors a stay *See Generac Power Systems, Inc. v Kohler Co* , 807 F Supp 2d 791 (E.D Wis. 2011) (granting stay based in part on early stage of litigation being stayed)

25 *Whether the non-moving party will be unduly prejudiced or tactically disadvantaged by a stay* Complainants, as the non-moving parties, will not be disadvantaged by the issuance of the stay they will be returned to the position they were in all of 25 days ago, a position they had been in for four months following the U S District Court's dismissal of their class action complaint. Complainants cannot identify any prejudice or disadvantage from a stay

26 *Whether a stay will simplify issues* A stay will simplify issues. a determination by the Third Circuit on Complainants' appeal will clarify in which forum Complainants must air their grievances. *See Saipan Shipping Co , Inc. v Asiatic Intermodal Seabridge, S.A.*, 19 S.R.R. 900 (ALJ, 1979) (granting stay where decision in parallel proceeding was likely to either "eliminate the need for a determination of the issues in this proceeding" or have a "strong and direct bearing on the issues in this case") This factor too supports the issuance of a stay

CONCLUSION

27 The operative principle is straightforward. "As between federal [] courts the general principle is to avoid duplicative litigation." *Colorado River Water Conservation Dist. v U S.*, 424 U S 800, 817 (1976) When, as here, the second-filed action is a protective action, courts universally and consistently stay the second, protective action. So too here.

28 For the foregoing authority, arguments and reasons, Respondents respectfully request that (a) their consolidated motion for a stay of proceedings be granted pending a

resolution of Complainants' appeal to the U S Court of Appeals for the Third Circuit; (b) an appropriate order be entered staying this action, and all associated proceedings and deadlines, pending a further order from the Presiding Officer; (c) Respondents be allowed twenty-one days after this application is determined and, if granted, twenty-one days after the stay is lifted, to answer, move or otherwise respond to the Complaint;[4] (d) the parties be commanded to file, every 90 days, a written status report updating the Presiding Officer on the U S District Court/Third Circuit proceedings, and (e) granting such other and further relief as the Presiding Officer may deem just and proper

DATED January 25, 2016

Respectfully submitted,

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[4] Although Complainants do not consent to the relief requested in this motion, Complainants have proposed that (a) they be allowed twenty-one days to respond to this motion for a stay, (b) Respondents be allowed twenty-one days within which to answer, move or otherwise respond to Complainants' FMC complaint, whenever that period starts to run, and (c) Complainants be allowed thirty days within which to answer any motion to dismiss filed by Respondents. Respondents have no objection to the stipulations proposed by Complainants.

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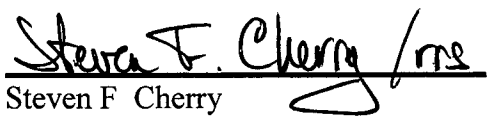

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of January, 2016, a true and correct copy of the foregoing Consolidated Motion for a Stay of Proceedings was served, via electronic mail and via first-class mail, postage prepaid, on.

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EXHIBIT "A"

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In Re: Vehicle Carrier Services Antitrust Litigation	Master Docket No. 13-cv-3306 (MDL No. 2471)
This Document Relates to *All Direct Purchaser Actions*	CONSOLIDATED AMENDED CLASS ACTION COMPLAINT JURY TRIAL DEMANDED

TABLE OF CONTENTS

Plaintiffs Cargo Agents, Inc., International Transport Management, Corp., and Manaco International Forwarders, Inc., by their undersigned attorneys, individually and on behalf of all others similarly situated, bring this action under the federal antitrust laws to recover treble damages and the costs of suit, including reasonable attorneys' fees, for their injuries and those of the members of the proposed Class (as defined below) resulting from Defendants' violations of the federal antitrust laws.

NATURE OF THE ACTION

1 Defendants are the largest providers of deep sea vehicle transport services ("Vehicle Carrier Services," described more fully below) in the world, including for shipments to and from the United States. Since at least 2000, Defendants have conspired to allocate customers and markets, to rig bids, to restrict supply, and otherwise to raise, fix, stabilize, or maintain prices for Vehicle Carrier Services for shipments to and from the United States. Defendants' agreement, combination, or conspiracy unreasonably restrained trade in violation of Section 1 of the Sherman Act, 15 U.S C. § 1 Defendants' conspiracy and agreements caused Plaintiffs and others who directly purchased Vehicle Carrier Services from Defendants to pay artificially inflated prices.

2. Competition authorities in the United States, Canada, Japan, and the European Union ("EU") have been actively investigating anticompetitive practices with respect to Vehicle Carrier Services. Additi onally, on or about February 27, 2014, Defendant CSAV (defined below) pleaded guilty to a criminal Information filed by the United States Department of Justice ("DOJ") for conspiring to suppress and eliminate competition by allocating customers and routes, rigging bids, and fixing prices for international Vehicle Carrier Services to and from the United States and elsewhere in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1

3 Plaintiffs bring this lawsuit on behalf of themselves and all other persons or entities who purchased Vehicle Carrier Services directly from one or more Defendants for shipments to and from the United States between January 1, 2000 and December 31, 2012 (the "Class Period") to recover damages sustained as a result of Defendants' unlawful conduct.

JURISDICTION AND VENUE

4 Plaintiffs bring this action against Defendants under Section 4 of the Clayton Act, 15 U.S.C. § 15, to recover treble damages and costs of suit, including reasonable attorneys' fees, for the injuries that Plaintiffs and the other members of the Class (as defined below) have suffered as a result of Defendants' violations of Section 1 of the Sherman Act, 15 U.S C. § 1

5. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 15 and 28 U.S.C. §§ 1331 and 1337

6. This Court has personal jurisdiction over each Defendant because each Defendant: (a) transacted business within the United States, including in this District; (b) directly sold Vehicle Carrier Services within the United States, including in this District; (c) had substantial aggregate contacts with the United States as a whole, including in this District; and (d) was engaged in an illegal conspiracy directed at, and which had a direct, substantial, reasonably foreseeable, and intended effect of, causing injury to the business or property of persons and entities residing in, located in, or doing business within the United States, including in this District. Defendants conduct business within the United States, including in this District, and they have purposefully availed themselves of the laws of the United States.

7 Alternatively, there is jurisdiction over foreign Defendants pursuant to Federal Rule of Civil Procedure 4(k)(2).

8. Venue is proper in this District pursuant to 15 U.S.C. § 22 and 28 U.S.C § 1391(b), (c) and (d) because during the Class Period, Defendants resided, transacted business, were found, or had agents in this District; a substantial part of the events or omissions giving rise to these claims occurred in this District; or a substantial portion of the affected interstate trade and commerce discussed in this Consolidated Amended Complaint ("Complaint") was carried out in this District.

UNITED STATES TRADE AND COMMERCE

9 During the Class Period, Defendants sold substantial quantities of Vehicle Carrier Services for shipments to and from the United States.

10. The activities of Defendants in connection with the sale of Vehicle Carrier Services and the conduct of Defendants and their co-conspirators as alleged in this Complaint: (a) constituted United States interstate trade or commerce; (b) constituted United States import trade or import commerce; or (c) were within the flow of and had a direct, substantial, and reasonably foreseeable effect on United States domestic trade or commerce or United States import trade or commerce. Given the volume of affected commerce, such effects were direct and substantial. In addition, it was reasonably foreseeable that Defendants' wrongful conduct, as alleged in this Complaint, would raise and artificially inflate prices for Vehicle Carrier Services for shipments to and from the United States, and would have a substantial effect on United States domestic trade or commerce or United States import trade or commerce.

11 Such effects, including the artificially raised and inflated prices that Plaintiffs and members of the proposed Class paid for Vehicle Carrier Services during the Class Period, caused antitrust injury to Plaintiffs and members of the proposed Class and give rise to their claims under Section 1 of the Sherman Act, 15 U S.C. § 1

12. The activities of the Defendants and their co-conspirators were within the flow of, were intended to, and did have, a substantial effect on United States commerce. The Defendants' Vehicle Carrier Services are sold in the flow of United States commerce.

PARTIES

Plaintiffs

13 Plaintiff Cargo Agents, Inc., ("Cargo Agents") is a Wyoming corporation with its principal place of business in Flushing, New York. Cargo Agents directly purchased Vehicle Carrier Services from one or more Defendants during the Class Period and was directly injured as a result.

14 Plaintiff International Transport Management Corp. ("ITM") is a New Jersey corporation with its principal place of business in Whitehouse Station, New Jersey ITM directly purchased Vehicle Carrier Services from one or more Defendants during the Class Period and was directly injured as a result.

15 Plaintiff Manaco International Forwarders, Inc., ("Manaco") is a Florida corporation with its principal place of business in Ft. Lauderdale, Florida. Manaco directly purchased Vehicle Carrier Services from one or more Defendants during the Class Period and was directly injured as a result.

Defendants

16. Defendant Nippon Yusen Kabushiki Kaisha ("NYK Japan") is a Japanese company with its principal place of business in Tokyo, Japan. Defendant NYK Line (North America) Inc. ("NYK America") is a wholly-owned subsidiary of NYK Japan with its principal place of business in Secaucus, New Jersey During the Class Period, NYK Japan and NYK America (collectively, "NYK Line"), directly or through their wholly-owned and controlled subsidiaries, provided,

marketed, and sold Vehicle Carrier Services for shipments to and from the United States, including in this District.

17 Defendant Mitsui O.S.K. Lines, Ltd., ("MOL Japan") is a Japanese company with its principal place of business in Tokyo, Japan. Defendant Mitsui O.S.K. Bulk Shipping (USA), Inc., ("MOBUSA") is a subsidiary of MOL Japan with its principal place of business in Jersey City, New Jersey Defendant World Logistic Service (U.S.A.) Inc. ("WLS") is a subsidiary of MOL Japan with its principal place of business in Long Beach, California. Defendant Nissan Motor Car Carrier Co., Ltd., ("NMCC") is a Japanese company with its principal place of business in Tokyo, Japan. Since 2009, NMCC has been owned 70% by MOL Japan, 20% by HAL (defined below), and 10% by Nissan Motor Co., Ltd. ("Nissan"). From 1998 to 2009, NMCC was owned 40% by MOL Japan and 60% by Nissan. During the Class Period, MOL Japan, MOBUSA, WLS, and NMCC (collectively, "MOL"), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States, including in this District.

18. Defendant Kawasaki Kisen Kaisha, Ltd., ("'K' Line Japan") is a Japanese company with its principal place of business in Tokyo, Japan. Defendant "K" Line America, Inc., ("'K' Line America") is a wholly-owned subsidiary of "K" Line Japan with its principal place of business in Richmond, Virginia. During the Class Period, "K" Line Japan and "K" Line America (collectively, "'K' Line"), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States, including in this District.

19 Defendant EUKOR Car Carriers Inc. ("EUKOR") is a South Korean company with its principal place of business in Seoul, South Korea. EUKOR is a joint venture: Wilh.

Wilhelmsen ASA owns 40%, Wallenius Lines AB owns 40%, and Hyundai Motor Company and Kia Motors Corporation own 20%. During the Class Period, EUKOR, directly or through its wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States, including in this District.

20. Defendant Wallenius Wilhelmsen Logistics AS ("WWL Norway") is a Norwegian company with its principal place of business in Lysaker, Norway Defendant Wallenius Wilhelmsen Logistics Americas LLC ("WWL America") is a wholly-owned subsidiary of WWL Norway with its principal place of business in Woodcliff Lake, New Jersey During the Class Period, WWL Norway and WWL America (collectively, "WWL"), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States, including in this District.

21 Defendant Compañia Sud Americana de Vapores S.A. ("CSAV Chile") is a Chilean company with its principal place of business in Valparaiso, Chile. Defendant CSAV Agency North America, LLC ("CSAV Agency") is a wholly-owned subsidiary of CSAV Chile, with its principal place of business located in Iselin, New Jersey D uring the Class Period, CSAV Chile and CSAV Agency (collectively, "CSAV"), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States, including in this District.

22. Defendant Höegh Autoliners Holdings AS ("HAL Holdings") is a Norwegian company with its principal place of business in Oslo, Norway Defendant Höegh Autoliners AS ("HAL AS") is a wholly-owned subsidiary of HAL Holdings with its principal place of business in Oslo, Norway Defendant AUTOTRANS AS ("AUTOTRANS") is a wholly-owned subsidiary of HAL Holdings with its principal place of business in Gennevilliers, France. Defendant Höegh

Autoliners, Inc. ("HAL Inc.") is a wholly-owned subsidiary of HAL Holdings with its principal place of business in Jacksonville, Florida. Defendant Alliance Navigation LLC ("Alliance") is a wholly-owned affiliate of HAL Inc. with its principal place of business in Jacksonville, Florida. During the Class Period, HAL Holdings, HAL AS, AUTOTRANS, HAL Inc., and Alliance (collectively, "HAL"), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States, including in this District.

Agents and Co-Conspirators

23 Various other individuals, firms, and corporations, not named as defendants in this Complaint, may have participated as co-conspirators with Defendants and performed acts and made statements in furtherance of the conspiracy Plaintiffs reserve the right to name some or all of these individuals, firms, and corporations as defendants.

24 Whenever in this Complaint reference is made to any act, deed, or transaction of any corporation or limited liability entity, the allegation means that the corporation or limited liability entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while actively engaged in the management, direction, control, or transaction of the corporation's or limited liability entity's business or affairs.

BACKGROUND ON VEHICLE CARRIER SERVICES

25 Vehicle Carrier Services involve transporting any type of wheeled freight on large, ocean-shipping vessels on deep-sea routes. The freight shipped includes all types of vehicles, including cars, trucks, construction vehicles, tracked vehicles and machines (such as excavators or bulldozers), tractors, trailers, capital equipment vehicles used in construction, agriculture, and mining, and other types of wheeled freight.

26. Vehicle Carrier Services involve the use of specialized vessels equipped with ramps such that wheeled freight can be rolled on or rolled off of the vessels. The term "RoRo" is often used to refer to these vessels ("RoRo Vessels") or to the transport of vehicles on such vessels ("RoRo Shipping").

27 There are two types of RoRo vessels: Pure Car Carriers ("PCCs") and Pure Car and Truck Carriers ("PCTCs"). PCCs were designed exclusively for the movement of passenger cars (and possibly small trucks). They can be thought of as movable parking garages with up to 10 to 12 levels (or decks). PCTCs were designed to carry cars and trucks. The main distinguishing feature between PCTCs and PCCs is that PCTCs are equipped with hydraulics that can move the decks within the vessel to enable the vessel to carry vehicles of varying sizes.

28. Although some smaller-wheeled freight conceivably can be put into containers and loaded by crane onto a container ship, transporting such vehicles on RoRo vessels is the preferred method because:

a. To transport a vehicle inside a container, special inserts are typically placed inside the container to maximize the number of vehicles that can fit inside;

b. Once a vehicle is driven into a container, it needs to be secured within the container and then transported to a port to be loaded by crane onto a vessel;

c. The steps outlined above take considerably more time than rolling vehicles onto RoRo vessels and are associated with additional costs;

d. The cost of shipping a vehicle in a container is typically higher than, and can be as much as two to three times the cost of, shipping that same vehicle via a RoRo vessel,

e. Vehicles may be damaged when they are driven in and out of containers, and their close proximity during shipping can also cause damage; and

f. If multiple vehicles are placed inside a container in a stacked fashion, there is a risk that oil or other fluids from one car can leak on other cars, also causing damage.

29 There are no reasonable substitutes for Vehicle Carrier Services for shipping wheeled freight over deep seas.

30 Plaintiffs and members of the proposed Class (collectively, "Direct Purchasers") include companies that arrange for the international ocean transportation of vehicles and other individuals or entities purchasing directly from any Defendant (or from any current or former subsidiary or affiliate of any Defendant) Vehicle Carrier Services for shipments to and from the United States.

SUSCEPTIBILITY OF VEHICLE CARRIER SERVICES TO COLLUSION

31 Vehicle Carrier Services are particularly susceptible to collusion because of high concentration, the commodity-like nature of the services at issue, high barriers to entry, inelasticity of demand, and ample opportunities for the Defendants to meet and collude.

Concentration

32. During the Class Period, Defendants accounted for roughly two-thirds or more of the global capacity of Vehicle Carrier Services.

Commodity-Like Services

33 Vehicle Carrier Services are homogeneous, commodity-like services. Purchasers of Vehicle Carrier Services choose providers almost exclusively based on price, because the qualitative differences between each provider are negligible. Thus, from the purchasers' perspective, providers of Vehicle Carrier Servicers are essentially interchangeable.

34 The homogenous and interchangeable nature of Vehicle Carrier Services makes it easier to create and maintain an unlawful conspiracy, agreement, or cartel because coordinating conduct and prices, as well as policing those collusively set prices, is less difficult than if Defendants had distinctive services that could be differentiated based upon features other than price.

Barriers to Entry

35. There are substantial entry barriers that a new provider of Vehicle Carrier Services would face. A new entrant would encounter significant hurdles, including multi-million dollar start-up costs associated with acquiring ships and equipment, distribution infrastructure, and hiring skilled labor and a sales force.

36. Additionally, the lack of reputation and customer relationships can be problematic for a new entrant; at least one Defendant has publicly stated that the strong relationships that vehicle carriers forge with their customers create high barriers to entry

Demand Inelasticity

37 Demand for Vehicle Carrier Services is highly inelastic because there are no close substitutes. A RoRo vessel is built specifically to transport the large, irregular shapes of wheeled vehicles and to enable those vehicles to be quickly and efficiently loaded and unloaded from the vessel.

38. Therefore, a price increase in Vehicle Carrier Services does not induce purchasers into using other types of cargo vessels or services. By allowing producers to raise prices without triggering customer substitution and lost sales revenue, inelastic demand facilitates collusion.

Opportunities for Conspiratorial Communications

39 The shipping industry has been characterized as a small world where many of the key figures know each other Many employees of the Defendants have spent their entire careers in the shipping industry Key employees have also transferred between the Defendant companies, fostering familiarity and connections between professed competitors and facilitating high-level coordination for the conspiracy

40 Defendants are members of several trade associations that provide opportunities to meet under the auspices of legitimate business. For example, several Defendants are members of the ASF Shipping Economics Review Committee. The Committee had meetings, including one in Tokyo on March 2, 2010, that was attended by representatives of several Defendants, including REDACTED (of "K" Line) and REDACTED (of NYK Line).

41 Defendants CSAV (through its subsidiary CSAV Group North America), NYK America, "K" Line America, MOL (through its subsidiary, MOL (America), Inc.), and WWL America are members of the United States Maritime Alliance, Ltd.

42. Defendants "K" Line, MOL, NYK America, and WWL America are members of the New York Shipping Association, Inc.

43 Defendants "K" Line, MOL (through its subsidiary, MOL (America) Inc.), NYK Line, and WWL are members of the Pacific Maritime Association.

44 Defendants CSAV, "K" Line, MOL, NYK Line, and WWL are members of the World Shipping Council.

45 Defendants CSAV, "K" Line, MOL, and NYK Line were members of the European Liner Affairs Association, which was later absorbed by the World Shipping Council.

46. Defendants NYK Line, "K" Line, and MOL are members of the Japan Shipowners' Association, a trade association based in Japan.

47 These associations—and the meetings, trade shows, and other industry events that stem from them—provided Defendants with ample opportunities to meet and conspire, as well as to perform affirmative acts in furtherance of the conspiracy

48 Defendants also routinely enter into vessel-sharing agreements whereby they reserve space on each other's ships. These sharing or chartering agreements are very common in the international maritime shipping industry

49 A "space charter" occurs when a shipping carrier charters space on another shipping carrier's vessel. The opportunity for a space charter arises when a shipping carrier has less than full capacity on its ship and another shipping carrier needs additional capacity

50. A "time charter" occurs when a shipping carrier fully charters another vehicle carrier's vessel. The opportunity for a time charter arises when a vehicle carrier would otherwise send a vessel home empty and another vehicle carrier needs space.

51 While ostensibly entered into to optimize utilization and increase efficiency, such sharing and chartering agreements also provide opportunities for Defendants to discuss Vehicle Carrier Services market shares, routes, and rates and to engage in illegal conspiracies to fix prices, rig bids, and allocate customers and markets.

DEFENDANTS' ANTICOMPETITIVE CONDUCT

52. Since at least 2000, Defendants have engaged in a continuous and wide-ranging conspiracy to restrain competition for the sale of Vehicle Carrier Services. Defendants have conspired to fix, and have fixed, prices for Vehicle Carrier Services, allocate customers for Vehicle

Carrier Services, and restrict the supply of Vehicle Carrier Services. Defendants' conspiracy has resulted in higher prices of Vehicle Carriers Services for shipments to and from the United States.

53 Plaintiffs plead the following known anticompetitive acts as exemplars of Defendants' conduct in the provision of Vehicle Carrier Services; Defendants' persistent and pervasive acts restrained trade and caused prices to be artificially inflated in the sale of Vehicle Carrier Services for shipments to and from the United States.

54 Because Defendants' conspiracy was secret in nature, and because Defendants took steps to conceal their anticompetitive agreements, Plaintiffs cannot yet know all the ways that Defendants conspired. On information and belief, Plaintiffs allege that Defendants engaged in acts in furtherance of their conspiracy in addition to those specifically alleged in this Complaint, and that such additional acts also restrained trade in the sale of Vehicle Carrier Services for shipments to and from the United States.

Defendants Conspired to Reduce Vehicle Carrier Services Fleet Capacity

55 During the Class Period, Defendants' executives had frequent communications regarding reducing Vehicle Carrier Services capacity, and they reached agreements concerning the capacity reduction. These capacity reductions, and the higher prices that resulted from them, were an effect of Defendants' conspiracy and were not caused by natural market forces.

56. Defendants reduced capacity by agreeing to scrap and "layup" vessels. Scrapping refers to destroying a vessel by breaking it up and selling the pieces for scrap. A layup occurs when a vessel is taken out of commission but not scrapped. In a "cold layup," the vessel sits idle without a crew and is not maintained. In a "hot layup," the vessel is staffed and maintained but not put into service. The costs for putting a vessel back into service are higher after a cold layup than after a hot layup.

57 During the Class Period, the Defendants discussed scrapping vessels, vessel layups, and plans for building new vessels. In connection with those discussions, Defendants reached agreements to control or reduce capacity, which resulted in artificially inflated prices for Vehicle Carrier Services for shipments to and from the United States.

58. For instance, from the late 1990s through 2002, executives from MOL, "K" Line, NYK Line, HAL, and WWL met twice a year—once in Japan and once in Europe—to discuss and agree on vessel scrapping and building plans and to exchange data. They also discussed Vehicle Carrier Services pricing for routes where they believed prices were particularly low These Defendants continued their data exchange into 2003

59 In 2008, demand for Vehicle Carrier Services fell dramatically as a result of the worldwide financial crisis, leaving Defendants with excess capacity In response, Defendants conspired to reduce the supply of Vehicle Carrier Services by engaging in a number of acts, including the following:

a. In late 2008 or early 2009, executives from MOL and NYK Line met and agreed to reduce their respective fleet sizes by scrapping RoRo vessels. They also agreed to resist price reduction requests from customers;

b. "K" Line likewise agreed to scrap some of its vessels after being approached by MOL or NYK Line;

c. During late 2008 to early 2009, MOL also discussed fleet reductions and reached understandings concerning such reductions, with WWL, HAL, and EUKOR,

d. In or around 2009, WWL, HAL, and "K" Line agreed to layup RoRo vessels to reduce capacity;

e. Mr REDACTED of MOL, Mr. REDACTED of NYK Line, Mr REDACTED of WWL, Mr REDACTED of HAL, and Mr REDACTED of "K" Line were involved in these discussions and ensuing agreements to scrap or layup vessels;

f. As a result of Defendants' agreements, MOL scrapped approximately 40 vessels, NYK Line scrapped approximately 40 vessels, "K" Line scrapped approximately 25 vessels, and HAL scrapped approximately 10 vessels. In total, the Defendants scrapped at least 20% of the vessels across the industry and placed an additional 15% of PCTCs in layups,

g. Almost no orders for new vessels were placed between 2009 and 2011

60 In addition to scrapping and layups, Defendants controlled excess capacity by "slow steaming" their RoRo vessels to create artificial supply shortages. This practice lowers the speed of the vessels and increases sailing time, which in turn decreases capacity As a result of the Defendants' agreements to slow-steam their vessels, by mid-2011, NYK Line, "K" Line, and MOL had reduced speeds on nearly every vessel, and NYK Line reduced PCTC speeds from 18-20 to 12-15 knots.

61 The Defendants' agreements to control or reduce capacity through vessel scrapping, layups, and slow-steaming reduced capacity and resulted in artificially high prices paid by Class Members for Vehicle Carrier Services on shipments to and from the United States during the C ass Period.

Defendants Conspired to Fix, Raise, or Artificially Maintain Prices for Vehicle Carriers Services

62. In addition to their communications and agreements to control or reduce capacity, Defendants met periodically throughout the Class Period and agreed on the prices to charge for Vehicle Carrier Services. The following are some examples:

a. Beginning in February 1997, MOL, NYK Line, and "K" Line met multiple times at MOL's office in Tokyo to discuss the upcoming renewal of a customer's contract for Vehicle Carrier Services. Participants at these meetings included Messrs. REDACTED and REDACTED of NYK Line and Messrs. REDACTED and REDACTED of "K" Line. Representatives from MOL, NYK Line, and "K" Line agreed that each would ask customers for a price increase for the shipment of vehicles from Japan to the United States and from the United States to Japan;

b. Around 2002 or 2003, MOL and "K" Line were both shipping vehicles from Europe to North America and agreed to each request a 3% to 5% price increase;

c. In late 2007, a customer issued a tender for shipments of vehicles from Europe to the United States; executives from MOL and "K" Line discussed the tender and agreed to request a price increase from the customer;

d. In late 2007 and early 2008, executives from MOL, NYK Line, and "K" Line met multiple times to try to obtain a 10% price increase for Vehicle Carrier Services. For example, Mr. REDACTED of NYK Line and Mr REDACTED of MOL met in November 2007 and agreed to increase pricing for Vehicle Carrier Services in 2008. They also agreed to convince "K" Line to increase its rates. The following month, Mr REDACTED of MOL and Mr REDACTED of NYK Line had dinner in a restaurant in Tokyo and discussed seeking price increases in 2008. On or about January 11, 2008, Mr REDACTED and Mr. REDACTED had lunch with Mr. REDACTED of "K" Line and agreed to a goal of a 5% increase in 2008. On or about January 22, 2008, Mr. REDACTED (of MOL), Mr REDACTED (of NYK Line), and Mr REDACTED (of "K" Line) agreed on a target of a 10% price increase for 2008, they further agreed that

each of the three companies would approach its principal customers and initially ask for a 10% price increase for Vehicle Carrier Services. In March 2008, Mr REDACTED (of MOL), Mr REDACTED (of NYK Line), and Mr REDACTED (of "K" Line) met and discussed the 2008 price increase. MOL, NYK Line, and "K" Line then proceeded to approach their customers as agreed, and they obtained price increases;

e. In fall 2008, Mr REDACTED (of MOL), Mr REDACTED (of NYK Line), and Mr REDACTED (of "K" Line) communicated and agreed to seek a certain price increase for Vehicle Carriers Services. These executives further agreed that NYK Line and "K" Line would share a customer's business from Japan to the west coast of the United States, and that NYK Line, "K" Line, and MOL would share the customer's business from Japan to the east coast of the United States; and

f. In November 2011, executives from MOL and HAL met for dinner and discussed and agreed upon Vehicle Carrier Services rates from New York to West Africa, a route on which they both offered service.

63 Defendants' agreements to fix, raise, or artificially maintain the price of Vehicle Carrier Services resulted in artificially high prices paid by Class Members for Vehicle Carrier Services on shipments to and from the United States during the Class Period.

Defendants Agreed Not to Compete for Customers for Vehicle Carrier Services

64 In addition to their communications and agreements to control or reduce capacity and to fix, raise, or artificially maintain the price of Vehicle Carrier Services, throughout the Class Period, Defendants met periodically and agreed not to compete for customers for Vehicle Carrier Services. The following are some examples:

a. In 2001, MOL and HAL agreed to allocate the transportation of vehicles from the United States to the Middle East. MOL was not the incumbent and wanted this business. Executives from MOL and HAL discussed and agreed that HAL would not bid in exchange for MOL agreeing to use HAL vessels on the route if it won the business. MO L won the business and then used HAL's vessels, as agreed;

b. In 2001 or 2002, MOL, WWL, and NYK Line agreed to not compete to transport a customer's vehicles from the United States to Japan. At the time, MOL was the incumbent, and MOL asked WWL to not compete with MOL when the customer issued a tender MOL told NYK Line what it planned to bid for the business and asked NYK Line to bid a higher amount. Both WWL and NYK Line agreed to do as MOL requested;

c. In 2002 or 2003, MOL, WWL, and HAL agreed to allocate a customer's business. After the customer issued a tender for transporting its vehicles from Europe to the United States, executives from MOL approached executives from WWL about the customer's business from Thailand to Europe. WWL was the incumbent on the route from Europe to the United States, and MOL wanted to obtain the business from Thailand to Europe. MOL and WWL agreed that MOL would not compete for WWL's route from Europe to the United States, and in exchange, WWL would not compete with MOL in MOL's attempt to obtain the Thailand to Europe business. In furtherance of this agreement, WWL gave MOL a price to bid as part of the tender for Europe to the United States. Similarly, MOL and Mr [redacted] of HAL agreed that HAL would not compete with MOL in MOL's attempt to obtain

the Thailand to Europe business, and in exchange MOL would not compete for HAL's business on routes from the United States to Africa and the Middle East;

d. In 2004, MOL and WWL agreed to not compete for each other's business with respect to two customers. MOL and WWL agreed that WWL would not compete with MOL for MOL business in the transport of one of the customer's vehicles from South Africa to the United States, and in exchange MOL would not compete for WWL's business in the transport of both customers' vehicles from Europe to the United States;

e. In 2008 or 2009, MOL and "K" Line agreed to not compete for a customer's business. MOL was the incumbent for transporting that customer's vehicles from the United States to South Africa. Mr REDACTED of "K" Line agreed that "K" Line would bid a higher rate than MOL did for this business, and in exchange Mr REDACTED of MOL agreed to not compete for "K" Line's business from the United States to Brazil and Argentina;

f. In 2010, CSAV and MOL agreed that MOL would not compete for CSAV's business to transport a customer's vehicles from the United States to Colombia from 2010 to 2012, in furtherance of this agreement, CSAV gave MOL a price to bid;

g. In February or March of 2012, Mr REDACTED (of MOL) and Mr REDACTED (of WWL) met in person and agreed that MOL would not compete for WWL's business transporting vehicles from the United States to China, and in exchange, WWL would not pursue business transporting a customer's vehicles from the United States to Korea. In furtherance of this agreement, WWL gave MOL a price to bid

on the United States to China route, and MOL gave WWL a price to bid on the United States to Korea route; and

h. In August 2011, MOL, NYK Line, and "K" Line agreed to allocate the shipment of a customer's trucks and buses from Japan to the United States. All three companies were incumbent carriers on the route, with NYK Line having the largest share. They agreed what amount of business each company would seek and at what rates. They further agreed that if any of the three companies did not obtain the specified business, the others would share some of the business that they won. NYK Line coordinated the agreement between the companies and provided each with the rates to bid.

65 Defendants' agreements to not compete for customers' business resulted in artificially high prices paid by Class Members for Vehicle Carrier Services on shipments to and from the United States during the Class Period.

Current Government Investigations Targeting Defendants

66. United States, Canadian, Japanese, and EU competition authorities have initiated a global, coordinated antitrust investigation concerning the unlawful conspiracy alleged in this Complaint.

67 A grand jury has been convened in Baltimore, Maryland to investigate alleged anticompetitive conduct involving Vehicle Carrier Services and has issued subpoenas to certain of the Defendants.

68. In early September 2012, the Japan Fair Trade Commission ("JFTC"), the European Commission, and the DOJ carried out raids and unannounced inspections at the offices of a number of the Defendants, including NYK Line, MOL, "K" Line, WWL, EUKOR, and HAL, news

organizations have reported that NMCC was also being investigated for the same unlawful conduct.

69 On or about February 27, 2014, the DOJ filed a criminal Information charging that, from as early as January 2000 through at least September 2012, CSAV conspired to suppress and eliminate competition by allocating customers and routes, rigging bids, and fixing prices for Vehicle Carrier Services to and from the United States and elsewhere in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 CSAV pleaded guilty to the criminal Information on or about February 27, 2014

70. The criminal Information against CSAV further states that, during the relevant period, CSAV and its co-conspirators attended meetings and engaged in communications regarding bids and tenders in which they agreed to allocate customers by not competing for each other's existing business for certain customers on certain routes; they agreed to not compete against each other on certain tenders by not bidding or agreeing to the prices they would bid on such tenders; they discussed and exchanged prices so as to not undercut each other's pricing on certain tenders; they submitted bids in accordance with agreements reached; and they provided RoRo services at collusive and non-competitive prices.

71 On or about March 18, 2014, the JFTC issued cease and desist orders and fines against NYK Line, "K" Line, WWL, and NMCC.

72. The anticompetitive agreements described in this Complaint were not filed with the Federal Maritime Commission ("FMC").

73 The anticompetitive agreements described in this Complaint violate the antitrust laws and relate to conduct that is not protected under the Shipping Act of 1984, 46 U.S.C. §§ 40101

- 41309; as a result, the Defendants could not have had a reasonable expectation that agreements encompassing such conduct were filed with the FMC and in effect during the Class Period.

74 During the Class Period, the FMC did not approve, modify, or amend the rates charged by Defendants for Vehicle Carrier Services for shipments to and from the United States.

DEFENDANTS' CONSPIRACY RESULTED IN HIGHER PRICES FOR PURCHASERS OF VEHICLE CARRIER SERVICES

75 As a result of their unlawful contract, combination, or conspiracy, Defendants succeeded in restricting output and fixing, raising, maintaining, or stabilizing prices for Vehicle Carrier Services charged throughout the world, including shipments to and from the United States.

76 Defendants' agreements to reduce capacity and increase prices in 2008 affected all direct purchasers of Vehicle Carrier Services, including for shipments to or from the United States.

77 By agreeing to fix, raise, or artificially maintain prices of Vehicle Carriers Services, Defendants fixed, raised, maintained, or stabilized prices charged to all direct purchasers, including for shipments to and from the United States, even where a particular agreement may have been made with respect to some customers.

78. Plaintiffs and the other Class Members have been injured in their business and property because they have paid more for Vehicle Carrier Services than they would have paid in a competitive market. Such injuries are of the type the antitrust laws were designed to prevent and flow directly from Defendants' unlawful conduct.

79 Defendants' unlawful contract, combination, or conspiracy has had at least the following effects:

a. Competition for Vehicle Carrier Services has been restrained,

b. Prices paid by Plaintiffs and the members of the Class for Vehicle Carrier Services were fixed, stabilized, or maintained at supra-competitive levels throughout the

world, including prices paid for Vehicle Carrier Services to and from the United States;

c. Customers and markets for Vehicle Carrier Services were allocated among Defendants and their co-conspirators;

d. Price competition regarding the sale of Vehicle Carrier Services was restrained, suppressed, or eliminated throughout the world, including for shipments to and from the United States, thus raising the prices of Vehicle Carrier Services above what they would have been absent Defendants' actions; as a result, Plaintiffs and the other members of the Class paid more for Vehicle Carrier Services than they would have paid in a competitive marketplace;

e. Direct purchasers of Vehicle Carrier Services have been deprived of the benefits of free and open competition; and

f. As a direct and proximate result of the unlawful combination, contract or conspiracy, Plaintiffs and the members of the Class have been injured and financially damaged in their businesses and property, in amounts to be determined.

80. The effects of Defendants' unlawful conduct are supported by economic data. Pricing for Vehicle Carrier Services is correlated with time charter rates and time charter rates can serve as a rough proxy for contemporaneous Vehicle Carrier Service rates charged by Defendants and their co-conspirators. An examination of time charter rates published by broker R.S. Platou shows that after a decade of relatively flat PCTC charter rates from 1990-2000, rates began to increase substantially in 2001 Between 2001 and 2008, R.S. Platou data show that rates increased by approximately 150%. This rate increase cannot be explained by normal market forces such as increased demand or increased costs:

a. Demand for Vehicle Carrier Services increased only modestly during this time period. According to the United States International Trade Commission, U S. imports and exports of automobiles increased by 24% from 2001 to 2008 (3% a year on average), far less than the 150% reported increase in PCTC charter rates (almost 20% a year on average); and

b. Increases in prices for Vehicle Carrier Services far outpaced any increases in expenses during the same period.

81 As explained in paragraph 59, *supra*, demand for Vehicle Carrier Services fell dramatically in late 2008 as a result of the worldwide financial crisis, and Defendants jointly responded to this drop in demand by agreeing to scrap and lay up a substantial number of vessels, and then implementing those agreements. In addition, Defendants continued to conspire to allocate customers and markets, rig bids, and fix, raise, or artificially maintain prices for Vehicle Carrier Services. As a result of these various anticompetitive acts, prices for Vehicle Carrier Services began rising steadily starting in 2009 at a rate that cannot be explained or justified by fuel costs or demand.

82. Defendants' conduct throughout the Class Period resulted in artificially high prices for Vehicle Carrier Services charged throughout the world, including shipments to and from the United States, and as a result Class Members paid more for Vehicle Carriers Services than they would have absent Defendants' unlawful conduct.

EQUITABLE TOLLING AND FRAUDULENT CONCEALMENT

83 Before September 6, 2012, when the global investigation of Defendants' misconduct was first publicly reported, a reasonable person under the circumstances would have believed the Vehicle Carrier Services to be a competitive industry and, thus, would not have been

alerted to begin to investigate the legitimacy of Defendants' prices for Vehicle Carrier Services before that time.

84. Conspiracies to fix prices, rig bids, and allocate customers and markets are, by their very nature, inherently self-concealing. If a conspiracy is to be successful at fixing prices, the participants must ensure that customers do not discover the existence of the conspiracy

85 Defendants' acts in furtherance of the conspiracy were concealed and carried out in a manner specifically designed to avoid detection. Plaintiffs and members of the Class did not discover and could not have discovered the alleged contract, conspiracy, or combination at an earlier date by the exercise of reasonable diligence.

86. Because Defendants' agreements, understandings, or conspiracies were kept secret until September 6, 2012, Plaintiffs and members of the Class before that time were unaware of Defendants' unlawful conduct alleged in this Complaint, and they did not know before that time that they were paying supra-competitive prices for Vehicle Carrier Services during the Class Period.

87 None of the facts or information available to Plaintiffs and members of the Class, if investigated with reasonable diligence, would have led to the discovery of the conspiracy alleged in this Complaint prior to September 6, 2012.

88 Moreover, Defendants affirmatively concealed their conspiracy by falsely claiming that the Vehicle Carrier Services market was competitive and creating the illusion that prices were rising as a result of increased demand and tight supply For example, Defendants stated.

a. "For our customers, quality services at a competitive cost are the essence of excellence." Mitsui O.S.K. Lines, Ltd. Annual Report 2000, at 9

b. "Market prospects for 2003 are characterised by a high degree of both political and economic uncertainty The year as a whole is expected to show relatively weak economic growth and reduced demand for vehicles in some of the world's principal regions." Wilh. Wilhelmsen ASA Annual Report 2002, at 11

c. "Developments in the car carrier and ro-ro markets are of major importance to both Wallenius Wilhelmsen Lines and EUKOR. This business will continue to make the biggest contribution to the group's results. Both liner and car carrier operations are affected by general trends in the world economy " Wilh. Wilhelmsen ASA Annual Report 2002, at 15

d. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity " CSAV Annual Report 2003, at 10

e. "CSAV participates in a very competitive market in which variations in global economic growth directly affect demand for cargo transport." *Id.* at 23

f. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity " CSAV Annual Report 2005, at 19

g. "CSAV participates in a very competitive market in which variations in global economic growth directly affect demand for cargo transport." *Id.* at 42.

h. "Car sales and demand for vehicle transport are expected to remain buoyant. The tight market for car shipments is accordingly expected to continue in 2005, even with the relatively large number of new car carriers due to be delivered during the year " Wilh. Wilhelmsen ASA Annual Report 2004, at 9

i. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity " CSAV Annual Report 2006, at 15

j "CSAV participates in a highly competitive market in which demand for cargo transport is directly affected by fluctuations in global economic growth." *Id.* at 149

k. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity " CSAV Annual Report 2007, at 15

l. "CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport." *Id.* at 39

m. "The 'K' Line Group is doing business in all international markets, and is involved in competition with many shipping companies at home and abroad." "K" Line Annual Report 2008, at 55

n. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity " CSAV Annual Report 2008, at 17

o. "CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport." *Id.* at 35

p. "The 'K Line Group promises to comply with applicable laws, ordinances, rules and spirit of the international community and conduct its corporate activities through fair, transparent and free competition." "K" Line Annual Report 2009, at 1

q "Global automobile marine transport volume was robust through the middle of 2008, resulting in a severe shortage of vessels in the marine transport market, a market in which prices are based on the relationship between supply and demand. As a result, shipping rates were on the increase." NYK Annual Report 2009, at 8

r "Demand for ocean transportation of ro-ro cargo to Oceania remained at low levels through the year, while car volumes rose in the latter half of the year Trades involving emerging markets such as China, South America, India and Africa offered relatively healthy volumes through most of the year, although fierce competition put significant pressure on rates." Wilh. Wilhelmsen ASA Annual Report 2009, at 11

s. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity " CSAV Annual Report 2009, at 17

t. "CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport." *Id.* at 36.

u. "Through its capital intensity and cyclical nature, the shipping segment has historically represented higher volatility and financial risk than maritime services. The car/ro-ro shipping has during the recent history also represented the single largest investment area and exposure for the group and its shareholders Demand for transportation of cars and other cargo has improved significantly, primarily during the second half of the year, and combined with better mix of cargo types this has positively affected the profitability of the fleet." Wilh. Wilhelmsen ASA Annual Report 2010, at 19-20.

v "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity " CSAV Annual Report 2010, at 15

w "CSAV works in a very competitive market, in which variations in global economic growth directly affect the demand for cargo transport." *Id.* at 35

x. "The results of the car-carrying services were severely affected by the fall in global demand seen in 2011 [a]dded to the weak global demand for car carriers and the consequent under-utilization of ships was a sharp rise in oil prices." CSAV Annual Report 2011, at 22.

y "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity " CSAV Annual Report 2011, at 15

z. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity " *Id* at 19

aa. "In addition to Japanese marine transport operators, the NYK Group competes with international shipping companies operating throughout the globe, and the competitive situation is growing more intense." NYK Annual Report 2012, at 102.

89 Thus, Defendants and their co-conspirators engaged in a successful anti-competitive conspiracy concerning Vehicle Carrier Services, which they affirmatively concealed.

90. By reason of the foregoing, the running of any statute of limitations has been tolled with respect to the claims that Plaintiffs and members of the Class have alleged in this Complaint.

CLASS ACTION ALLEGATIONS

91 Plaintiffs brings this action on behalf of themselves and as a class action under the provisions of Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following Class (the "Class")·

> All persons and entities that purchased Vehicle Carrier Services for shipments to or from the United States directly from any of the Defendants or any current or former predecessor, subsidiary, or affiliate of each, at any time during the period from January 1, 2000 to December 31, 2012. This Class excludes all federal, state, governmental, and national entities and Defendants and their respective predecessors, subsidiaries, affiliates, and business partners.

92. Plaintiffs believe that there are thousands of Class members located throughout the entire United States, the exact number, location, and identities of which are known by Defendants, making the Class so numerous and geo graphically dispersed that joinder of all members is impracticable.

93 There are numerous questions of law and fact common to the Class, which questions relate to the existence of the conspiracy alleged, and the type and common pattern of injury sustained as a result thereof, including, but not limited to:

a. Whether Defendants and their co-conspirators engaged in a combination and conspiracy among themselves to reduce capacity, allocate markets for, or fix, raise, maintain, or stabilize the prices of, Vehicle Carrier Services for shipments to and from the United States,

b. The identity of the participants of the conspiracy;

c. The duration of the conspiracy and the nature and character of the acts performed by Defendants and their agents and co-conspirators in furtherance of the conspiracy;

d. Whether the alleged conspiracy violated Section 1 of the Sherman Act;

e. Whether the conduct of Defendants and their co-conspirators, as alleged in this Complaint, caused injury to the business or property of the Plaintiffs and the other members of the Class;

f. Whether the Defendants and their co-conspirators fraudulently concealed the conspiracy's existence from the Plaintiffs and the other members of the Class;

g. The effect of the conspiracy on the prices of Vehicle Carrier Services for shipments to and from the United States during the Class Period, and

h. The appropriate class-wide measure of damages.

94 Plaintiffs are direct purchasers of Vehicle Carrier Services and their interests are coincident with and not antagonistic to those of the other members of the Class. Plaintiffs are members of the Class, have claims that are typical of the claims of the Class Members, and will fairly and adequately protect the interests of the members of the Class. In addition, Plaintiffs are represented by counsel who are competent and experienced in the prosecution of antitrust and class action litigation.

95 The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications.

96. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

97 A class action is superior to other available methods for the fair and efficient adjudication of this controversy Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently and without duplication of effort and expense that numerous individual actions would engender The Class is readily identifiable through the files of Defendants, and prosecution as a class action will eliminate the possibility of repetitious litigation. Class treatment will also permit the adjudication of relatively small claims by many Class members who otherwise could not afford to litigate an antitrust claim such as is asserted in this Complaint. This class action presents no difficulties of management that would preclude its maintenance as a class action.

CAUSE OF ACTION
Violation of Section 1 of the Sherman Act (15 U.S.C. § 1)

98. Defendants and their agents and co-conspirators entered into and engaged in a contract, combination, or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1

99 Defendants' acts in furtherance of their contract, combination, or conspiracy were authorized, ordered, or done by their officers, agents, employees, or representatives while actively engaged in the management of Defendants' affairs.

100 Beginning at least as early as January 1, 2000 and continuing through at least December 31, 2012, Defendants and their agents entered into an agreement in restraint of trade to reduce capacity, allocate customers and routes, rig bids, and otherwise to raise, fix, stabilize, or maintain prices for Vehicle Carrier Services for shipments to and from the United States, thereby creating anticompetitive effects.

101 Defendants' anticompetitive acts involved United States domestic commerce and import commerce, and had a direct, substantial, and foreseeable effect on United States commerce by raising and fixing prices for Vehicle Carrier Services for shipments to and from the United States.

102. The conspiratorial acts and combinations have caused unreasonable restraints with respect to Vehicle Carrier Services.

103 As a result of Defendants' unlawful conduct, Plaintiffs and the members of the Class have been harmed by being forced to pay inflated, supra-competitive prices for Vehicle Carrier Services.

104 In formulating and carrying out the alleged agreement, Defendants and their co-conspirators did those things that they combined and conspired to do, including but not limited to the acts, practices, and course of conduct set forth in this Complaint.

105 Defendants' conspiracy had the following effects, among others.

a. Price competition for Vehicle Carrier Services for shipments to and from the United States has been restrained, suppressed, or eliminated for shipments to and from the United States;

b. Prices for Vehicle Carrier Services sold by Defendants, their divisions, subsidiaries, and affiliates have been fixed, raised, stabilized, and maintained at artificially high, non-competitive levels for shipments to and from the United States;

c. Plaintiffs and members of the Class who purchased Vehicle Carrier Services from Defendants, their divisions, subsidiaries, and affiliates have been deprived of the benefits of free and open competition.

106. As a direct and proximate result of Defendants' anticompetitive conduct, Plaintiffs and members of the Class have been injured in their business or property by paying more for Vehicle Carrier Services than they would have paid in the absence of the conspiracy

107 The alleged contract, combination, or conspiracy is a *per se* violation of the federal antitrust laws.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

a) That the Court certify this action as a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure and that Plaintiffs be deemed adequate representatives of the Class;

b) That the Court declare Defendants' contract, combination, or conspiracy to have violated Section 1 of the Sherman Act, which violations injured Plaintiffs and the Class members in their business and property;

c) That Plaintiffs and the Class members recover damages, as provided under the federal antitrust laws, and that a joint and several judgment in their favor be entered against Defendants in an amount to be trebled in accordance with such laws;

d) That Plaintiffs and the Class members recover their costs of the suit, including reasonable attorneys' fees, as provided by law; and

e) That the Court direct further relief as it may deem just and proper

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial as to all issues triable by a jury

Dated. June 2, 2014

/s/ Robert P. Donovan

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EXHIBIT "B"

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE VEHICLE CARRIER SERVICES ANTITRUST LITIGATION *This Document Relates To All Actions*	**Master Docket No.: 13-3306 (ES)** **(MDL No. 2471)** **OPINION**

SALAS, DISTRICT JUDGE

I. INTRODUCTION

In this multidistrict litigation ("MDL"), purchasers of vehicle carrier services allege a conspiracy among ocean shipping companies to fix prices, allocate customers and routes, and restrict capacity Direct Purchaser Plaintiffs ("DPPs") filed a consolidated class action complaint against Defendants[1] seeking treble damages and costs of suit under section 4 of the Clayton Act, 15 U.S.C. § 15, for violation of section 1 of the Sherman Act, 15 U.S.C. § 1 (D.E. No. 142, Direct Purchaser Plaintiff Consolidated Amended Class Action Complaint ("DPP Compl.") ¶ 4). Indirect Purchaser Plaintiffs ("IPPs") collectively include End-Payors, Automobile Dealers ("Auto Dealers"), and Truck & Equipment Dealers, each of whom filed consolidated class action complaints against Defendants seeking equitable and injunctive relief under section 16 of the Clayton Act, 15 U.S.C. § 26, for violation of section 1 of the Sherman Act, 15 U.S.C. § 1, and treble damages and costs of suit under various state antitrust, consumer protection, and unjust

[1] "Defendants" collectively include: Nippon Yusen Kabushiki Kaisha and NYK Line North America Inc. ("NYK Defendants"); Kawasaki Kisen Kaisha, Ltd. and "K" Line America, Inc. ("K-Line Defendants"); Wallenius Wilhelmsen Logistics AS, Wallenius Wilhelmsen Logistics America LLC, and EUKOR Car Carriers, Inc. ("WWL/EUKOR Defendants"); Compañía Sud Americana de Vapores, S.A. and CSAV Agency, LLC ("CSAV Defendants"); Höegh Autoliners AS and Höegh Autoliners, Inc. ("Höegh Defendants"); and Mitsui O.S.K. Lines, Ltd., Mitsui O.S.K. Bulk Shipping (U.S.A.), Inc., and World Logistics Service (U.S.A.) Inc. ("MOL Defendants"). The Court notes that a "settlement in principal" was reached between certain IPPs and the K-Line Defendants, (July 23, 2015 Transcript ("Tr ") at 11), and additionally notes that a "settlement agreement" was reached between IPPs and the MOL Defendants, for which the parties "request that the Court stay all proceedings as they relate to [the MOL Defendants] " (D.E. No. 272 at 1). The Court nevertheless must necessarily address the consolidated motions, which include the K-Line Defendants and the MOL Defendants.

enrichment laws. (D.E. No 183, End-Payor Plaintiff Second Consolidated Amended Class Action Complaint ("End-Payor Compl.") ¶¶ 11, 213–85, D.E. No. 199, Automobile Dealer Second Consolidated Amended Class Action Complaint ("Auto Dealer Compl.") ¶¶ 11, 213–60; No 14-4469, D.E. No. 1, Truck and Equipment Dealer Class Action Complaint ("Truck Center Compl.") ¶¶ 12, 197–242).[2]

Before the Court are the following motions. Defendants' Consolidated Motion to Dismiss the Indirect Purchasers' Complaints, (D.E. No 209); End-Payor Plaintiffs' Request for Judicial Notice in Support of Response to Defendants' Motion to Dismiss Indirect Purchaser Actions, (D.E. No. 212); Defendants' Consolidated Motion to Dismiss the Direct Purchasers' Complaint, (D.E. No. 218); Defendant EUKOR Car Carriers, Inc.'s Motion to Dismiss All Complaints, (D.E. No. 214); Höegh Defendants' Motion to Dismiss the Direct Purchasers' Complaint, (D.E. No. 227); and Höegh Defendants' Motion to Dismiss the Indirect Purchasers' Complaints, (D.E. No. 230). The Court heard oral argument on July 23, 2015 (Tr). Because the Shipping Act of

[2] End-Payors allege violations of the antitrust statutes of the District of Columbia and the following states: Arizona, California, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Utah, Vermont, West Virginia, Wisconsin, (End-Payor Compl. ¶¶ 213–53, *see also* Tr at 107 (withdrawing Tennessee antitrust claim)); and they allege violation of the consumer protection laws of the District of Columbia and the following states: Arkansas, California, Florida, Hawaii, Massachusetts, Missouri, Montana, New Mexico, New York, North Carolina, Rhode Island, South Carolina, Vermont. (End-Payor Compl. ¶¶ 254–85).

Auto Dealers allege violations of the antitrust statutes of the District of Columbia and the following states: Arizona, California, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Utah, Vermont, West Virginia, Wisconsin, (Auto Dealer Compl. ¶¶ 213–46); they allege violation the following state consumer protection laws: Arkansas, California, Florida, Massachusetts, Montana, New Mexico, New York, North Carolina, South Carolina, (Auto Dealer Compl. ¶¶ 247–58; *see also* Tr at 107 (withdrawing Vermont consumer protection claim)); and they allege claims of unjust enrichment "under the laws of all states listed in the Second [state antitrust] and Third [state consumer protection] Claims." (Auto Dealer Compl. ¶ 260).

Truck and Equipment Dealers allege violations of the antitrust statutes of the District of Columbia and the following states: Arizona, California, Hawaii, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Utah, Vermont, West Virginia, Wisconsin, (Truck Center Compl. ¶¶ 197–228); they allege violation of the following state consumer protection laws: Arkansas, California, Florida, Massachusetts, Montana, New Mexico, New York, North Carolina, South Carolina, (Truck Center Compl. ¶¶ 229–40; *see also* Tr at 107 (withdrawing Vermont consumer protection claim)); and they allege claims of unjust enrichment "under the laws of all states listed in the Second [state antitrust] and Third [state consumer protection] Claims." (Truck Center Compl. ¶ 242).

1984 bars Clayton Act claims and preempts state law claims under the theory of conflict preemption, the motions to dismiss are granted.

II. FACTUAL BACKGROUND

Defendants are ocean shipping companies engaged in the transportation of large numbers of cars, trucks, and other vehicles, including agricultural and construction equipment, between foreign countries and the United States using Roll On/Roll Off ("RO/RO") or specialized car carrier vessels. (DPP Compl. ¶¶ 16–22, 25–28, End-Payor Compl. ¶¶ 2, 59–72, Auto Dealer Compl. ¶¶ 2, 44–57, Truck Center Compl. ¶¶ 3, 45–47). As alleged in the complaints, "vehicle carrier services" refer to the paid ocean transportation of new, assembled motor vehicles by RO/RO or specialized vehicle carrier vessels. (End-Payor Compl. ¶ 2, Auto Dealer Compl. ¶ 2, Truck Center Compl. ¶ 3).

Defendants sell vehicle carrier services to original equipment manufacturers ("OEMs")—mostly large automotive, construction and agricultural manufacturers such as Honda, Volkswagen, Mitsubishi, Toyota, Nissan, and Subaru—which purchase vehicle carrier services from Defendants to transport vehicles manufactured by the OEMs outside of the United States to purchasers in the United States. (End-Payor Compl. ¶ 82, Auto Dealer Compl. ¶¶ 21, 23, 27, 33, 37, 39, 41, Truck Center Compl. ¶¶ 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43).

Both DPPs and IPPs allege that Defendants entered into various collusive, secret agreements to fix and increase the prices for vehicle carrier services to and from the United States. These include:

(i) coordination of price increases, (DPP Compl. ¶¶ 62, 63, End-Payor Compl. ¶¶ 125–30; Auto Dealer Compl. ¶¶ 113–18; Truck Center Compl. ¶¶ 108–18);

(ii) agreements not to compete, including coordination of responses to price reduction requests made by the OEMs and allocation of customers and routes, (DPP Compl. ¶¶ 64, 65, End-Payor Compl ¶¶ 131–45, Auto Dealer Compl ¶¶ 119–32, Truck Center Compl. ¶¶ 119–32); and

(iii) agreements to restrict capacity by means of agreed upon fleet reductions, (DPP Compl. ¶¶ 55–61, End-Payor Compl. ¶¶ 146–48, Auto Dealer Compl. ¶¶ 133–40; Truck Center Compl. ¶¶ 133–35).

DPPs allege they have directly purchased vehicle carrier services from Defendants, and were directly injured as a result. (DPP Compl. ¶¶ 13–15, 91). DPPs also "include companies that arrange for the international ocean transportation of vehicles." (*Id.* ¶ 30).

As mentioned above, IPPs include Auto Dealers, Truck & Equipment Dealers, and End-Payors. The Auto Dealers and the Truck & Equipment Dealers are automobile dealers and truck & equipment dealers, respectively, in the United States that allege that they purchased automobiles or trucks & equipment from the OEMs that were transported to the United States in Defendants' RO/RO or specialized vehicle carrier vessels. (Auto Dealer Compl. ¶¶ 21–43, Truck Center Compl. ¶¶ 21–44). The End-Payors are individuals who allege that they purchased or leased automobiles from Auto Dealers in the United States. (End-Payor Compl. ¶¶ 20–58). Each of the IPPs alleges that they are "indirect purchasers" of vehicle carrier services because, purportedly, the cost paid by the OEMs for vehicle carrier services was passed on to them as part of the purchase or lease price they paid for the automobiles or trucks. (End-Payor Compl. ¶¶ 10, 182, 183, Auto Dealer Compl. ¶¶ 10, 172–76; Truck Center Compl. ¶¶ 10, 157–62).

III. PROCEDURAL BACKGROUND

These civil antitrust actions were precipitated by the disclosure in September 2012 of raids upon certain Defendants' offices by governmental agencies in connection with antitrust investigations. (*See* DPP Compl. ¶¶ 66–71, End-Payor Compl. ¶¶ 6–8, 190–92, Auto Dealer Compl. ¶¶ 6–8, 184–86; Truck Center Compl. ¶¶ 4, 5, 7, 169–71). On May 24, 2013, the first of the cases that comprise this MDL was filed in this Court. (*See* D.E. No. 1). On October 8, 2013, the Judicial Panel on Multi-District Litigation selected this Court as the transferee court in this MDL for coordinated or consolidated pretrial proceedings, pursuant to 28 U.S.C. § 1407 (D.E. No. 21).[3]

On June 13, 2014, United States Magistrate Judge Joseph A. Dickson issued MDL Order Number 4, which set a global briefing schedule for the pending motions to dismiss. (D.E. No. 156). The motions were fully briefed and filed on January 26, 2015 The Court heard oral argument on July 23, 2015 and thereafter received supplemental briefing on the issue of conflict preemption.[4] The motions are now ripe for resolution.

IV. LEGAL STANDARD

To withstand a motion to dismiss for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"

[3] A review of the docket as of this writing indicates that this MDL currently consists of thirty-one member cases. (*See* No. 13-3306 docket sheet).

[4] The Court has reviewed and considered the following written submissions: End-Payor Plaintiff's Request for Judicial Notice (D.E. No. 212), and Defendants' Consolidated Brief in Opposition (D.E. No. 213); Defendants' Consolidated Motion to Dismiss the IPP Complaints (D.E. No. 209), IPP Opposition Brief (D.E. No. 210), Defendants' Consolidated Reply Brief (D.E. No. 211), End-Payor Letter Brief RE. *Oneok* (D.E. No. 251), Defendants' Consolidated Letter Brief in Response (D.E. No 252), Defendants' Consolidated Supplemental Brief RE. Conflict Preemption (D.E. No. 269), and IPP Supplemental Brief RE. Conflict Preemption (D.E. No. 270); Defendants' Consolidated Motion to Dismiss the DPP Complaint (D.E. No. 218), DPP Opposition Brief (D.E. No. 219), and Defendants' Consolidated Reply Brief (D.E. No. 220); EUKOR's Motion to Dismiss All Complaints (D.E. No. 214), DPP Opposition Brief (D.E. No. 215), IPP Opposition Brief (D.E. No. 216), and EUKOR Reply Brief (D.E. No. 217); Höegh's Motion to Dismiss the DPP Complaint (D.E. No. 227), DPP Opposition Brief (D.E. No. 228), and Höegh's Reply Brief (D.E. No. 229); Höegh's Motion to Dismiss the IPP Complaints (D.E. No. 230), IPP Opposition Brief (D.E. No. 231), and Höegh's Reply Brief (D.E. No. 232).

Ashcroft v Iqbal, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v Twombly*, 550 U.S 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully " *Id.*

To determine the sufficiency of a complaint under *Twombly* and *Iqbal* in the Third Circuit, the court must take three steps. first, the court must take note of the elements a plaintiff must plead to state a claim; second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth; finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief. *See Burtch v Milberg Factors, Inc.*, 662 F.3d 212, 221 (3d Cir 2011) (citations omitted).

"In deciding a Rule 12(b)(6) motion, a court must consider only the complaint, exhibits attached to the complaint, matters of the public record, as well as undisputedly authentic documents if the complainant's claims are based upon these documents." *Mayer v Belichick*, 605 F.3d 223, 230 (3d Cir 2010). Among the public records a court may examine in order to resolve a motion to dismiss is a judicial proceeding from a different court or case, but a court must be mindful of the distinction between the existence of a fact and its truth. *S. Cross Overseas Agencies, Inc. v Wah Kwong Shipping Grp. Ltd.*, 181 F.3d 410, 426, 427 n.7 (3d Cir 1999).

V. ANALYSIS

A. Clayton Act Claims for Damages and Injunctive Relief are Barred by the Shipping Act[5]

Defendants argue that claims for damages and injunctive relief under the Clayton Act are barred by the Shipping Act of 1984 (the "Shipping Act"). (D.E. No 209-1 at 71, D.E. No. 218-1 at 3–11, D.E. No. 220 at 1–11, Tr at 112–37, 156–62). The Shipping Act states that "[a] person may not recover damages under section 4 of the Clayton Act (15 U.S.C. 15), or obtain injunctive relief under section 16 of that Act (15 U.S.C. 26), for conduct prohibited by [the Shipping Act] " 46 U.S.C. § 40307(d). Defendants assert that the conduct alleged in the complaints by DPPs and IPPs—namely agreements to fix prices, allocate customers and routes, and restrict capacity—are "prohibited by" the Shipping Act, thus triggering the statutory bar against private antitrust actions under section 40307(d).

DPPs contend that agreements to restrict capacity are not prohibited by the Shipping Act and are therefore subject to private antitrust suits. First, DPPs argue that agreements to restrict capacity are outside of the purview of the Shipping Act and they point to the lack of explicit reference to "capacity restriction" in the Shipping Act and comments made by a former Commissioner of the Federal Maritime Commission ("FMC") in support. (D.E. No. 219 at 4–7). Second, they argue that even if agreements to restrict capacity were covered, they are not "prohibited acts" sufficient to trigger the bar against Clayton Act claims. (*Id.*).

DPPs concede that claims relating to price fixing and market allocation are prohibited by the Shipping Act and are thus non-actionable under section 40307(d)'s Clayton Act bar (Tr at 156). Thus, the precise issue before the Court is whether capacity restrictions, as alleged in the

[5] Although this point was addressed directly by DPPs for their claims for damages under the Clayton Act, IPPs incorporated and adopted DPPs' arguments with respect to their claims for injunctive relief under the Clayton Act. (D.E. No. 210 at 72–73).

complaints, are covered by the Shipping Act and subject to section 40307(d)'s statutory bar against private antitrust actions.

In the Third Circuit, "the first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. When the statutory language has a clear meaning, [the court] need not look further " *Valansi v Ashcroft*, 278 F.3d 203, 209 (3d Cir 2002) (internal citation and quotation omitted). "However, if the language of the statute is unclear, [the court] attempt[s] to discern Congress'[s] intent using the canons of statutory construction. If the tools of statutory construction reveal Congress'[s] intent, that ends the inquiry " *United States v Cooper*, 396 F.3d 308, 310 (3d Cir 2005), as amended (Feb. 15, 2005) (internal citations omitted). "If, on the other hand, [the court is] unable to discern Congress'[s] intent using tools of statutory construction, [the court] generally defer[s] to the governmental agency's reasonable interpretation." *Id.* at 310–11

The Court finds that a plain reading of the Shipping Act reveals that capacity restrictions are prohibited by the Shipping Act and that DPPs' and IPPs' claims for damages and injunctive relief under Clayton Act are forbidden under section 40307(d). First, capacity restrictions are covered in the "Application" section of the Shipping Act, and so agreements among ocean common carriers (*i.e.*, Defendants) to restrict capacity are required to be filed with the FMC. Second, because ocean common carriers are prohibited from operating under an unfiled agreement that is required to be filed with the FMC, the Shipping Act provides an exemption for claims under the Clayton Act under section 40307(d). The Court discusses each in further detail below

i Agreements to Reduce Capacity Fall Within the Shipping Act Purview and Must be Filed with the FMC

The Shipping Act states that agreements between ocean common carriers falling within certain enumerated categories, 46 U.S.C. § 40301(a), "shall be filed" with the FMC, *id.* § 40302(a). Defendants argue that agreements to restrict capacity are covered by the Shipping Act, specifically section 40301(a), which states as follows:

> § 40301 Application
> (a) OCEAN COMMON CARRIER AGREEMENTS.—This part applies to an agreement between or among ocean common carriers to—
> (1) discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;
> (2) pool or apportion traffic, revenues, earnings, or losses;
> (3) allot ports or regulate the number and character of voyages between ports;
> (4) regulate the volume or character of cargo or passenger traffic to be carried,
> (5) engage in an exclusive, preferential, or cooperative working arrangement between themselves or with a marine terminal operator;
> (6) control, regulate, or prevent competition in international ocean transportation, or
> (7) discuss and agree on any matter related to a service contract.

46 U.S.C. § 40301(a). (D.E. No. 218-1 at 9–11, D.E. No. 220 at 3–5). DPPs argue that agreements to restrict capacity are not covered by the Shipping Act, as demonstrated by lack of explicit reference and the comments of a former Commissioner of the FMC. (D.E. No. 219 at 4–7).

The Court holds that a plain reading of the statutory language demonstrates that capacity restrictions, as alleged in the complaints, are covered by the Shipping Act. The complaints allege that Defendants reduced capacity by agreeing to "scrap" (*i.e.*, render non-usable) and "layup" (*i.e.*, take out of commission but not scrap) vessels. (DPP Compl. ¶ 56; End-Payor Compl. ¶ 123, Auto Dealer Compl. ¶ 111, Truck Center Compl. ¶ 106). DPPs allege that the capacity reductions were the result of a "conspiracy and were not caused by natural market

forces" and "resulted in artificially inflated prices for Vehicle Carrier Services." (DPP Compl. ¶¶ 55, 57). Similarly, IPPs allege that the capacity reductions were the result of "concerted, collusive efforts" and "caused prices to artificially rise." (End-Payor Compl. ¶ 124, Auto Dealer Compl. ¶ 112, Truck Center Compl. ¶ 107). These allegations plainly and unambiguously fit within the Shipping Act's parameters, specifically section 40301(a), as set forth above.

When "interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute and the objects and policy of the law, as indicated by its various provisions " *Kokoszka v Belford*, 417 U.S. 642, 650 (1974) (quoting *Brown v Duchesne*, 19 How 183, 194, 15 L.Ed. 595 (1857)); *see also Cooper*, 396 F.3d at 313 ("The Whole Act Rule instructs that subsections of a statute must be interpreted in the context of the whole enactment.") (citation omitted).

The Court reads section 40301(a) as a whole to cover the type of capacity restrictions alleged by Plaintiffs. Most on point is subpart 6 allegations that Defendants conspired to reduce capacity is clearly an agreement to "control, regulate, or prevent competition." *Id.* § 40301(a)(6). Similarly, the allegations in the complaint also speak to an agreement to "regulate the number and character of voyages between ports," *id.* § 40301(a)(3), and an agreement to "regulate the volume or character of cargo or passenger traffic to be carried," *id.* § 40301(a)(4). More generally, the allegations suggest a "cooperative working arrangement." *Id.* § 40301(a)(5). Thus, the Court is satisfied that capacity reductions are covered by a plain reading of the Shipping Act's text. In addition, the regulations promulgated by the FMC further support the conclusion that capacity reductions are within the Shipping Act's purview For example, 46 C.F.R. § 535 104(e) defines "capacity rationalization" as "a concerted reduction, stabilization, withholding, or other limitation in any manner whatsoever by ocean common carriers on the size

or number of vessels or available space offered collectively or individually to shippers in any trade or service." *Id.* The regulations further state that an "agreement that contains the authority to discuss or agree on capacity rationalization" is subject to the Monitoring Report requirements, *id.* § 535 702(a)(1), and also indicate a requirement for a "narrative statement on any significant reductions in vessel capacity," *id.* § 535 703(c).

The personal remarks of FMC Commissioner Michael A. Khouri relied on by DPPs are not persuasive. (*See* D.E. No. 219 at 6–7, Ex. C). On May 13, 2010, Mr Khouri made the following statement as part of a panel discussion at the "International Trade Symposium. Charting New Horizons"

> One final comment—recent reports of increases in annual transpacific contract rates have heightened shipper concerns that these rate hikes are facilitated by carriers using, first, their legal authority to discuss voluntary general rate guidelines with, second, discussions to agree on capacity restriction. The first discussion would be legal under the Shipping Act. The second discussions—if they occurred—would be outside of the Shipping Act purview and would therefore be a violation of the Sherman Act.

(D.E. No. 219, Ex. C at 2). The Court agrees with Defendants that: (i) DPPs' interpretation of the statement is inconsistent with the statutory language and regulations, (D.E. No. 220 at 9); (ii) the remarks are not entitled to *Chevron* deference because Mr Khouri explicitly stated that his remarks were his personal views and were not offered as the official position of the FMC,[6] (*id.* at

[6] "*Chevron* deference" refers to *Chevron U.S.A. Inc. v Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), which "directs courts to accept an agency's reasonable resolution of an ambiguity in a statute that the agency administers." *Michigan v. E.P.A.*, 135 S. Ct. 2699, 2701 (2015).

> *Chevron* requires courts to conduct a two-step inquiry Under the first step, "[w]hen a court reviews an agency's construction of the statute which it administers," it must ask 'whether Congress has directly spoken to the precise question at issue." [*Chevron*, 467 U.S.] at 842. If Congress has resolved the question, the clear intent of Congress binds both the agency and the court." *Id.* Under the second step, if "Congress has not directly addressed the precise question at issue," because "the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." [*Id.*] at 843

Hagans v Comm'r of Soc. Sec., 694 F.3d 287, 294 (3d Cir 2012) (parallel citation omitted). Here, even if for argument's sake the first step were satisfied, a clear "guiding principle" from the Third Circuit is that "*Chevron*

10); (iii) the remarks can alternatively be interpreted as simply indicating that unfiled agreements (*i.e.*, agreements that lack "legal authority") are outside of the Shipping Act purview, as opposed to agreements involving capacity reductions, (Tr at 132–33); and (iv) consistent with the Shipping Act, Mr Khouri's reference to a Sherman Act violation more likely is in reference to criminal liability as opposed to private antitrust actions, (*id.*).

Thus, the Court finds that agreements to restrict capacity are covered by the Shipping Act. As a result, agreements to restrict capacity are required to be filed with the FMC. Specifically, section 40302 states that, "[a] true copy of every agreement referred to in section 40301(a) of this title *shall be filed* with the Federal Maritime Commission. If the agreement is oral, a complete memorandum specifying in detail the substance of the agreement *shall be filed*." 46 U.S.C. § 40302(a) (emphasis added). Agreements to restrict capacity are "referred to" in section 40301(a) and thus must be filed under section 40302(a). Here, DPPs and IPPs allege—and Defendants do not dispute—that the agreements to reduce capacity were not filed with the FMC. (*See* DPP Compl. ¶ 72, End-Payor Compl. ¶ 195, Auto Dealer Compl. ¶ 189; Truck Center Compl. ¶ 174).

ii. The Statutory Bar Against Private Antitrust Actions Applies because Ocean Common Carriers are Prohibited from Operating Under an Unfiled Agreement to Reduce Capacity

Section 40307(d) states that "[a] person may not recover damages under section 4 of the Clayton Act (15 U.S.C. 15), or obtain injunctive relief under section 16 of that Act (15 U.S.C. 26), for conduct prohibited by [the Shipping Act]." 46 U.S.C. § 40307(d). Defendants argue

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deference is inappropriate for informal agency interpretations," *id.* at 300 n.14 (citation and internal quotation marks omitted), let alone remarks such as Mr Khouri's that are expressly disclaimed as personal views. (*See* D.E. No. 219, Ex. C ("My remarks today reflect my personal views and thoughts and are not offered as the official position of the United States or the Federal Maritime Commission.")). Thus, Mr Khouri's remarks are clearly not entitled to *Chevron* deference.

that the statutory bar against Clayton Act claims is triggered because ocean common carriers are prohibited from operating under an unfiled agreement to restrict capacity, under the "general prohibitions" outlined in the Shipping Act. (D.E. No. 209-1 at 71, D.E. No. 218-1 at 3–11, D.E. No. 220 at 1–11, Tr at 112–37, 156–62) (citing to 46 U.S.C. § 41102(b)). DPPs contend that operating under unfiled agreements to restrict capacity are not "prohibited acts" sufficient to trigger the bar against Clayton Act claims. (D.E. No. 219 at 4–7). In their briefs, DPPs discussed the lack of reference to capacity restrictions in the "Prohibitions and Penalties" chapter of the Shipping Act. (*Id.*). At oral argument, however, DPPs focused on the "general prohibitions" section.[7] (*See* Tr at 137–56).

The Court agrees with Defendants and finds that because ocean common carriers are prohibited from operating under an unfiled agreement that is required to be filed with the FMC, the Shipping Act provides an exemption for claims under the Clayton Act.

Chapter 411 of the Shipping Act is entitled "Prohibitions and Penalties" and is comprised of nine sections. *See* 46 U.S C. §§ 41101–41109 Prohibited acts include, for example, certain disclosures of information, *id.* § 41103, unreasonably refusing to deal, *id.* § 41104(10), and concerted action among common carriers to allocate shippers, *id.* § 41105(6). Although capacity restrictions are not explicitly referenced within the sections of chapter 411, this is not dispositive as DPPs contend, because of the broad scope of the "general prohibitions" section.[8]

Section 41102 of the Shipping Act covers "general prohibitions" and states in relevant part: "[a] person may not operate under an agreement required to be filed under section 40302

[7] Although the Court indicated on the record that it might not consider this argument due to waiver resulting from failure to include it in the opposition brief, (*see* Tr 148), the Court accepts it and takes it under consideration for purposes of deciding the instant motions.

[8] The Court also notes that other activities that are clearly covered by the Shipping Act (*e.g.*, price fixing) likewise are not explicitly included in the "Prohibitions and Penalties" chapter

if the agreement has not become effective under section 40304 of this title or has been rejected, disapproved, or canceled." 46 U.S.C. § 41102(b)(1). As detailed *supra*, agreements relating to capacity restrictions are required to be filed under section 40302. While Defendants argue that the unfiled agreements to restrict capacity at issue fall within section 41102(b)(1)—*i.e.*, that they are prohibited from operating under unfiled agreements relating to capacity restrictions—DPPs contend that section 41102(b)(1) is triggered only if an agreement is filed under section 40304 In other words, DPPs assert that ocean common carriers are prohibited from operating under an agreement to restrict capacity only if they file the agreement with the FMC and it then does not "become effective." (*See* Tr at 149–52). Taken to its conclusion, under DPPs' reading, if an agreement to reduce capacity is not filed with the FMC, then the parties to that agreement are subject to private antitrust suits. But the language of section 41102(b)(1) does not plainly and unambiguously necessitate the conclusion advanced by DPPs. The Court disagrees with DPPs' interpretation because it results in surplusage and is inconsistent with the overall statutory scheme and the legislative history

First, DPPs' reading appears to result in surplusage. Under section 40304, a filed agreement that is not rejected becomes effective after forty-five days. *See* 46 U.S.C. § 40304(c) ("Unless rejected an agreement is effective on the 45th day after filing) (internal punctuation and subdivision omitted). Thus, under DPPs' reading of section 41102(b)(1), the phrase "or has been rejected" would be surplusage because if an agreement "has not become effective under section 40304," it necessarily must have been rejected according to section 40304 Therefore, the fact that "or has been rejected" is in the statute cuts against DPPs interpretation. *See Ki Se Lee v Ashcroft*, 368 F.3d 218, 223 (3d Cir 2004) (recognizing "the goal of avoiding surplusage in construing a statute").

Second, section 41102(b)(1) can just as easily be read to support Defendants' position. For example, the section can be interpreted to prohibit ocean common carriers from operating under an agreement required to be filed simply *if* it has not been filed. In other words, whereas DPPs' interpretation reads the "if" as a prerequisite to filing with the FMC, the "if" can also be read to explain that ocean common carriers are prohibited from operating under "secret" agreements that did not "become effective" because they were never filed in the first place. Where there is more than one reasonable reading of the statute, the Court is guided by the canons of statutory construction. *See Cooper*, 396 F.3d at 310 "When the language of a statute is ambiguous, [courts] look to its legislative history to deduce its purpose." *United States v Hodge*, 321 F.3d 429, 437 (3d Cir 2003); *United States v Gregg*, 226 F.3d 253, 257 (3d Cir 2000) ("Where the statutory language does not express Congress's intent unequivocally, a court traditionally refers to the legislative history and the atmosphere in which the statute was enacted in an attempt to determine the congressional purpose.").

The legislative history directly supports Defendants' interpretation of section 41102(b)(1). *See* Report of the House Committee on Merchant Marine and Fisheries, H.R. Rep. No. 98-53, pt. 1, at 12 (1983), *reprinted in* 1984 U.S.C.C.A.N 167, 177 (hereinafter "House Report") [9] The House Report explicitly discusses antitrust immunity·

> [I]f parties who could avail themselves of antitrust immunity by submitting to regulation under the terms of the Shipping Act of [1984] fail to do so, then their knowing conduct, undertaken without the benefit of an agreement being filed and in effect, will subject them to limited antitrust exposure. The antitrust exposure for these so-called "secret" agreements is limited to injunctive and criminal prosecution by the Attorney General, and does not carry with it any private right of action otherwise available under the antitrust laws.

[9] *See* D.E. No. 209-13, Ex. K to Defendants' Brief in Support of their Motion to Dismiss IPPs Complaints.

House Report at 12, 177 As an initial matter, the legislative history specifically references "secret" agreements as opening the door to antitrust exposure. *Id.* But an agreement filed with the FMC under section 40304—as DPPs contend is required under section 41102—could not realistically be considered "secret." *See* Black's Law Dictionary 1556 (10th ed. 2014) (defining "secret" as "[s]omething that is kept from the knowledge of others or shared only with those concerned; something that is studiously concealed"). More to the point, the legislative history specifically states that a "secret" agreement was not intended to give rise to private antitrust actions. As a whole, the legislative history clearly supports Defendants' interpretation of section 41102(b)(1) if an ocean common carrier enters into an agreement to reduce capacity, and that agreement is not filed with the FMC under section 40304, then the carrier will be subject to injunctive and criminal prosecution by the Attorney General, but not private antitrust actions. House Report at 12, 177 ("The antitrust exposure for so-called 'secret' agreements is limited to injunctive and criminal prosecution by the Attorney General, and does not carry with it any private right of action otherwise available under the antitrust laws.").

The Court therefore finds that the most natural reading of section 41102(b)(1) is that it prohibits ocean common carriers from operating under an unfiled agreement to reduce capacity Here, as noted *supra*, DPPs and IPPs allege—and Defendants do not dispute—that the agreements to reduce capacity were not filed with the FMC. (*See* DPP Compl. ¶ 72, End-Payor Compl. ¶ 195, Auto Dealer Compl. ¶ 189; Truck Center Compl. ¶ 174). Thus, DPPs and IPPs allege that Defendants engaged in conduct prohibited by the Shipping Act. Accordingly, because "[a] person may not recover damages under section 4 of the Clayton Act (15 U.S.C. 15), or obtain injunctive relief under section 16 of that Act (15 U.S C. 26), for conduct prohibited by

[the Shipping Act]," 46 U.S.C. § 40307(d), DPPs' claim under section 4 of the Clayton Act and IPPs' claims under section 16 of the Clayton Act will be dismissed with prejudice.[10]

B. The State Law Claims At Issue are Conflict Preempted by the Shipping Act

Defendants argue that IPPs' state antitrust and consumer protection claims are impliedly preempted by the Shipping Act and within the exclusive federal jurisdiction of the FMC. First, Defendants argue that Congress intended for the Shipping Act to occupy the field and to displace state law relating to international maritime commerce. (*See* D.E. No. 209 at 52–61, D.E. No. 211 at 36–40). In the alternative, Defendants argue that state laws conflict with the Shipping Act because they stand as an obstacle to Congress's underlying objectives. (D.E. No. 211 at 40–44, D.E. No. 269 at 2–18).

IPPs contend that Defendants have not met their high burden in showing that preemption applies. IPPs argue that there is no indication that Congress intended for the Shipping Act to occupy the entire field with respect to international maritime commerce. (D.E. No. 210 at 53–64). In a supplemental filing, IPPs argue that conflict preemption is a narrow doctrine that does not apply here because there is no actual conflict between state laws and the Shipping Act, (D.E. No. 270 at 7–12); Congress chose not to limit state antitrust laws when it passed the Shipping Act, (*id.* at 12–14); every court to address whether the Shipping Act preempts state law has held

[10] DPPs argue that the Court should "discount" arguments made by CSAV and K-Line with respect to the statutory bar against private antitrust actions. (*See* D.E. No. 219 at 7–10). DPPs contend that it would be "manifestly unjust" to permit them to raise such arguments when the sentencing Judge in the related criminal actions referenced the pending civil actions when ordering no restitution. (*Id.*). The Court agrees with Defendants that merely acknowledging the existence of civil claims during the plea agreement does not preclude the arguments here, especially because: (i) the Shipping Act was not addressed as part of the criminal proceedings; (ii) CSAV and K-Line did not waive any arguments with respect to the Shipping Act; (iii) even if they had waived a Shipping Act argument, it would not permit a cause of action that is otherwise prohibited by the statute; (iv) there is no indication that approval of the guilty pleas was predicated on civil damages recovery; and (v) plaintiffs can seek reparations through the FMC via 46 U.S.C. § 41305. Thus, the Court finds that DPPs have not established that CSAV and K-Line should be precluded from making arguments with respect to the statutory bar against private antitrust actions. The Court's ruling with respect to section 40307(d) applies to CSAV and K-Line.

that it does not, (*id.* at 14–16); and Defendants' reliance on an isolated excerpt from the legislative history is misleading, (*id.* at 16–20).

Article VI of the Constitution provides that the laws of the United States "shall be the supreme Law of the Land; any Thing in the Constitution or laws of any state to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. As a result, under the doctrine of preemption, "any state law, however clearly within a State's acknowledged power, must yield if it interferes with or is contrary to federal law" *Gade v Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S 88, 89 (1992). "Preemption can apply to all forms of state law, including civil actions based on state law" *Farina v Nokia Inc.*, 625 F.3d 97, 115 (3d Cir 2010). "For the purposes of preemption analysis, it is the cause of action, and not the specific relief requested, that matters. Preemption speaks in terms of claims, not in terms of forms of relief" *Id.* at 133

"'Often Congress does not clearly state in its legislation whether it intends to pre-empt state laws '" *Delaware & Hudson Ry Co. v Knoedler Mfrs., Inc.*, 781 F.3d 656, 661 (3d Cir 2015), *pet. for cert. docketed*, No. 14-1359 (May 14, 2015) (quoting *Malone v White Motor Corp.*, 435 U.S. 497, 504 (1978)). "When that is the case, 'courts normally sustain local regulation of the same subject matter unless it conflicts with federal law or would frustrate the federal scheme, or unless the courts discern from the totality of the circumstances that Congress sought to occupy the field to the exclusion of the States.'" *Id.* In other words, state law can be impliedly preempted under the doctrines of field preemption and conflict preemption.

Under field preemption, "the States are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance." *Arizona v United States*, 132 S. Ct. 2492, 2501 (2012).

> The intent to displace state law altogether can be inferred from a framework of regulation "so pervasive that Congress left no room for the States to supplement it" or where there is a "federal interest so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject."

Id. (quoting *Rice v Santa Fe Elevator Corp.*, 331 U.S 218, 230 (1947)). "To determine the boundaries that Congress sought to occupy within the field, [courts] look to the federal statute itself, read in the light of its constitutional setting and its legislative history " *Lozano v City of Hazleton*, 724 F.3d 297, 303 (3d Cir 2013) *cert. denied sub nom. City of Hazleton, Pa. v Lozano*, 134 S. Ct. 1491 (2014) (internal quotation and citation omitted).

By contrast, "[c]onflict pre-emption can occur in one of two ways. where 'compliance with both federal and state regulations is a physical impossibility,' or 'where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Lozano*, 724 F.3d at 303 (quoting *Arizona*, 132 S. Ct. at 2501). "Courts must utilize their judgment to determine what constitutes an unconstitutional impediment to federal law, and that judgment is 'informed by examining the federal statute as a whole and identifying its purpose and intended effects.'" *Id.* (quoting *Crosby v Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000)). But mere "tension" between federal and state law is "generally not enough" to show an obstacle supporting preemption, rather the "repugnance or conflict" must be "so direct and positive that the two acts cannot be reconciled or consistently stand together " *MD Mall Assocs., LLC v CSX Transp., Inc.*, 715 F.3d 479, 495 (3d Cir 2013), *as amended* (May 30, 2013), *cert. denied*, 134 S. Ct. 905 (2014) (citation and internal quotation marks omitted).

Two overarching principles guide the analysis. *See Farina*, 625 F.3d at 115 First, congressional intent is the "ultimate touchstone" in preemption analysis. *Cipollone v Liggett*

Grp., Inc., 505 U.S. 504, 516 (1992) (internal quotation and citation omitted). Second, courts generally apply a presumption against preemption, *see id.*, but the presumption is not absolute. *See United States v Locke*, 529 U.S. 89, 108 (2000) ("[A]n 'assumption' of nonpre-emption is not triggered when the State regulates in an area where there has been a history of significant federal presence."), *cf Wyeth v Levine,* 555 U.S. 555, 565 n.3 (2009) (noting that the presumption against preemption "accounts for the historic presence of state law but does not rely on the absence of federal regulation"). In other words, "[t]he presumption [against preemption] applies with particular force in fields within the police power of the state, but does not apply where state regulation has traditionally been absent." *Farina*, 625 F.3d at 116 (internal citations omitted).

Here, the Court finds that the state laws at issue conflict with the Shipping Act and are therefore preempted because they stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Paramount to the Court is the Shipping Act's express purpose of minimizing government intervention and regulatory costs coupled with exemptions from private antitrust actions under the Clayton Act and the ability of any person to bring claims before the FMC.

i The Court Does Not Address Whether the Presumption Against Preemption Applies

Several public policy concerns are implicated in the determination of whether a presumption against preemption applies. On the one hand, "monopolies and unfair business practices" are "area[s] traditionally regulated by the States." *California v ARC Am. Corp.*, 490 U.S. 93, 101 (1989); *see also Pac. Merch. Shipping Ass'n v Goldstene*, 639 F.3d 1154, 1167 (9th Cir 2011) (applying the presumption against preemption in maritime-related action,

"[g]iven the 'historic presence of state law' in the area of air pollution"). "In areas of traditional state regulation, we assume that a federal statute has not supplanted state law unless Congress has made such an intention clear and manifest." *Bates v Dow Agrosciences LLC*, 544 U.S 431, 449 (2005) (internal quotation marks omitted).

On the other hand, the field of national and international maritime commerce is a field "where the federal interest has been manifest since the beginning of the Republic and is now well established." *Locke*, 529 U S. at 90. Where state laws "bear upon national and international maritime commerce, there is no beginning assumption that concurrent regulation by the State is a valid exercise of its police powers. Rather, [courts] must ask whether the local laws in question are consistent with the federal statutory structure " *Id.* at 108.

The Court is thus confronted with a scenario where laws within areas of traditional state regulation (monopolies and unfair business practices) touch upon a field where state regulation has traditionally been absent (international maritime commerce). However, the Court declines to reach a conclusion as to whether a presumption against preemption applies in this context because it finds that the state laws at issue present a sufficient obstacle to the objectives of Congress. *Crosby*, 530 U.S. at 374 n.8 ("We leave for another day a consideration in this context of a presumption against preemption. Assuming, *arguendo*, that some presumption against preemption is appropriate, we conclude, based on our analysis below, that the state Act presents a sufficient obstacle to the full accomplishment of Congress's objectives under the federal Act to find it preempted.").

ii. The State Laws are an Obstacle to the Accomplishment of Congress's Objective of Minimal Government Intervention and Regulatory Costs

The Shipping Act has four stated purposes, two of which are pertinent here:

> (1) establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs, [and]
> (4) promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.

46 U.S.C. § 40101

Defendants argue that IPPs' proposed application of state law stands as an obstacle to the first purpose. (*See* D.E. No 269 at 4–5). In short, Defendants contend that Congress intended to create an "exclusive system of redress" through the FMC for violations of the Shipping Act and that subjecting the ocean shipping industry to the laws of fifty separate states for the same conduct conflicts with Congress's purpose. (*Id.*).[11]

IPPs argue that their proposed application of state law does not conflict with the purposes of Congress and that the first purpose relied on by Defendants is "not implicate[d] in a material way" (D.E. No. 270 at 10–11). Instead, IPPs focus on the fourth purpose—competitive and efficient ocean transportation—and contend that private actions under state law merely complement the FMC and DOJ's enforcement of federal law (*Id.*).

[11] IPPs argue that CSAV and K-Line should be judicially estopped from invoking preemption because they took an "inconsistent position" when they pleaded guilty to the criminal charges. (*See* D.E. No. 210 at 63–64). The Court does not agree. Judicial estoppel applies only if the "(1) the party to be estopped is asserting a position that is irreconcilably inconsistent with one he or she asserted in a prior proceeding; (2) the party changed his or her position in bad faith, *i.e.*, in a culpable manner threatening to the court's authority or integrity; and (3) the use of judicial estoppel is tailored to address the affront to the court's authority or integrity" *Montrose Med. Group Participating Sav Plan v Bulger*, 243 F.3d 773, 777–78 (3d Cir 2001). Judicial estoppel is a narrow doctrine because it is "an extraordinary remedy that should be employed only when a party's inconsistent behavior would otherwise result in a miscarriage of justice." *Id.* at 784 (citation and internal quotation marks omitted). For the reasons stated in footnote 10, *supra*, IPPs have not demonstrated that judicial estoppel applies. Thus, the Court's holding with respect to preemption applies to CSAV and K-Line.

Although the Court agrees with IPPs that the state laws at issue may complement the fourth purpose of the Shipping Act—a point not contested by Defendants—the Court cannot simply disregard the Act's *first* stated purpose. Instead, the Court agrees with Defendants that the state laws at issue conflict with the Act's first purpose of minimizing government intervention and regulatory costs. Accordingly, the state law claims shall be dismissed as preempted.

The Shipping Act states that agreements between ocean common carriers falling within certain enumerated categories, 46 U.S.C. § 40301(a), "shall be filed" with the FMC, *id.* § 40302(a). If such agreements are filed and become effective, the "antitrust laws do not apply" and the carrier is immune from criminal and civil liability under the Sherman Act and Clayton Act, respectively 46 U.S.C. § 40307(a); *see also id.* § 40102(2) (defining "antitrust laws" to include the Sherman Act and Clayton Act). On the other hand, if such agreements are not filed with the FMC, then the carrier is subject to criminal liability under the Sherman Act and to sanctions and penalties by the FMC, but private antitrust actions under the Clayton Act remain barred. 46 U.S.C. §§ 41102(b)(1); 40307(d); *see also* Part V.A, *supra*.

Any person may file a complaint with the FMC for violations of the Shipping Act, and may seek reparations for injury if the complaint is filed within three years of the date of accrual. 46 U.S.C. § 41301, *see also* 46 C.F.R. § 502.62 (outlining FMC complaint process). The FMC may award reparations up to double actual damages, *id.* § 41305, and the person to whom the award was made can seek enforcement of the award in a district court, *id.* § 41309 The FMC has broad investigatory powers, including the ability to subpoena witnesses and evidence, *id.* § 41303(a)(1), and issue sanctions for delay, *id.* § 41302(d), which can be enforced via application to a district court, *id.* § 41308 In other words, the FMC possesses power not unlike a district

court. *Fed. Mar Comm'n v S. Carolina State Ports Auth.*, 535 U.S. 743, 759 (2002) ("[T]he similarities between FMC proceedings and civil litigation are overwhelming."). Thus, "while no private party may sue for damages or for injunctive relief under the antitrust laws for conduct [prohibited by the Shipping Act], the FMC is empowered to order reparations, including double damages, to impose sanctions and penalties for prohibited conduct, and to file suit in federal district court against the offending party " *A & E Pac. Const. Co. v Saipan Stevedore Co.*, 888 F.2d 68, 71 (9th Cir 1989).

The Shipping Act is undeniably silent on the availability of private remedies under state law The Shipping Act defines "antitrust laws" solely by reference to federal antitrust laws, 46 U S.C. § 40102(2), and specifically bars actions under the Clayton Act for unfiled agreements, *see* 46 U.S.C. §§ 40307(d), 41102(b)(1), but makes no mention of state law remedies. IPPs argue that it can be implied that Congress chose not to preempt state laws. (*See* D.E. Nos. 210 at 57–61, 270 at 12–14). Defendants counter that the lack of reference to state laws is irrelevant. (*See* D.E. No. 269 at 16–17). The Court agrees with Defendants that the Shipping Act's silence on the availability of private remedies under state law does not necessitate a finding of no preemption.

First, the Court does not find that silence weighs against preemption here. If silence with respect to state laws was dispositive, then the Shipping Act's grant of immunity from the "antitrust laws" for filed and effective agreements would apply only to federal laws, given the explicit statutory definition in 46 U.S.C. § 40102(2). Thus, under a plain reading of the statute, if an agreement is filed and effective and an ocean common carrier is entitled to full immunity from antitrust liability under the Sherman Act and Clayton Act, a state attorney general or consumer could nevertheless pursue antitrust claims against the carrier for the same agreement

under state law [12] Although this scenario is admittedly hypothetical (since the facts before the Court involve an unfiled, secret agreement), it demonstrates that the Shipping Act's silence with respect to state law is not dispositive, because such a result is borderline absurd and is clearly at odds with Congress's intent.

Second, the Court is not convinced that specific reference to the Clayton Act in the context of unfiled agreements necessarily implies that state law claims are permitted. Given the outsized federal role in the area of national and international maritime commerce as compared to the states, *see Locke*, 529 U.S. at 99, 108, it does not follow that Congress ever envisaged that myriad state laws would be applied to regulate international maritime commerce. Accordingly, the Court is not persuaded by IPPs' arguments that cases such as *Wyeth* are on point here. (*See* D.E. No 210 at 59–60; D.E. No. 270 at 12). *Wyeth* stands in part for the proposition that silence on the issue of preemption coupled with awareness of state causes of action in that particular field is evidence that Congress did not intend to preempt state law claims. *Wyeth v Levine*, 555 U.S. at 575 ("'The case for federal pre-emption is particularly weak where Congress has indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to stand by both concepts and to tolerate whatever tension there is between them.'") (quoting *Bonito Boats, Inc. v Thunder Craft Boats, Inc.*, 489 U.S. 141, 166–67 (1989)). There is nothing in the Shipping Act which suggests that Congress ever indicated its awareness of the operation of state law in the field of national and international maritime commerce when it explicitly carved out causes of action under federal antitrust law To the contrary, as IPPs themselves point out, the legislative history is "bereft of meaningful discussion of state antitrust laws." (D.E. No. 270 at 16–17). This lack of discussion makes sense given the dearth of state

[12] Notwithstanding IPPs' conclusory position that state antitrust laws would not apply to a filed and effective agreement. (D.E. No. 270 at 7).

tort litigation in the field of national and international maritime commerce when Congress passed the Shipping Act. Indeed, as IPPs note, "in the [Shipping] Act's decades long history, *this* action is the first to present the question of state antitrust law's applicability" (D.E. No. 270 at 6 n.1) (emphasis in original). In contrast, when Congress passed federal drug labeling laws it was "certain[ly] aware[]" of the "prevalence of state tort litigation" related to pharmaceuticals. *Wyeth*, 555 U.S. at 575 Thus, cases such as *Wyeth* are distinguishable

In any event, "neither an express pre-emption provision nor a saving clause bars the ordinary working of conflict pre-emption principles." *Buckman Co. v Plaintiffs' Legal Comm.*, 531 U.S 341, 352 (2001) (citation and internal quotation marks omitted). In other words, even if the Shipping Act were not silent and had indicated approval of state law claims, they could still be subject to conflict preemption.

The legislative history further supports a finding of conflict preemption. "The Shipping Act of 1984 was intended to clarify and broaden the antitrust immunity provided by the previous Shipping Act of 1916" *Seawinds Ltd. v Nedlloyd Lines, B.V*, 80 B.R. 181, 184 (N.D Cal. 1987) *aff'd*, 846 F.2d 586 (9th Cir 1988). Judicial interpretations had narrowed the scope of antitrust immunity provided by the Shipping Act of 1916 and created parallel jurisdiction between the regulatory agency and the federal courts in certain cases. *Id.* (citation omitted). Ameliorating the regulatory uncertainty caused by erosion of the protections of the Shipping Act of 1916 was a key concern of at least the Committee on Merchant Marine and Fisheries in crafting the remedial scheme provided in the Shipping Act of 1984

> To avoid the uncertainty created by the vagueness of the 1916 Shipping Act, the Committee intends that violations of this Act not result in the creation of parallel jurisdiction over persons or matters which are subject to the Shipping Act of [1984], the remedies and sanctions provided in the Shipping Act of [1984] will be the exclusive remedies and sanctions for violations of the Act.

House Report at 12, 177; *see also Am. Ass'n of Cruise Passengers, Inc. v Carnival Cruise Lines, Inc.*, 911 F.2d 786, 792 (D C. Cir 1990) ("Congress was concerned about a carrier being subject to 'parallel jurisdiction,' *i.e.* remedies and sanctions for the same conduct made unlawful by both the Shipping Act and the antitrust laws."). Furthermore, it was intended that the FMC be "provided exclusive jurisdiction in administering all of the provisions of the Shipping Act as they relate to international liner shipping regulations." House Report at 3, 168.[13]

Thus, "[t]he Shipping Act of 1984 was designed in part to clarify the remedies available and the proper forum for pursuing them." *Seawinds*, 80 B.R. at 184 As noted above, any person may file a complaint with the FMC for alleged violations of the Shipping Act, and a complainant may receive up to double damages as reparations. 46 U.S.C. §§ 41301, 41305 This remedial scheme was created "[i]n order to counterbalance the elimination of the deterrent force of antitrust laws " *Seawinds*, 80 B.R. at 184

In sum, "[a]mong the major purposes to be accomplished by the Shipping Act of 1984 were clarification of antitrust immunity for international ocean carriers, vesting in the Federal Maritime Commission of exclusive jurisdiction over administration of the Shipping Act's provisions, and minimizing government involvement in regulation of shipping operations." *Id.* (citing House Report at 3–4, 168–69). "By limiting jurisdiction to the FMC, and restricting that Commission's regulatory scope, Congress implemented the goal of reducing government

[13] IPPs argue that legislative history which addresses the exclusivity of civil remedies under the Shipping Act should be characterized as "misleading." (*See* D.E. No. 270 at 16–20). IPPs contend that such comments are ambiguous, and that the Court should focus primarily on the statutory text and discount "cherry-picked" legislative history because the final statutory text was the result of hard-won compromise. (*Id.*). Although it is true that statements of a particular committee cannot be said to stand for the view of Congress more generally, so long as these statements are read as a part of the statute and Congress's intent as a whole, the Court does not think it improper to consider these portions of the legislative history "Courts must utilize their judgment to determine what constitutes an unconstitutional impediment to federal law, and that judgment is 'informed by examining the federal statute as a whole and identifying its purpose and intended effects.'" *Lozano*, 724 F.3d at 303 (quoting *Crosby*, 530 U.S. at 373 (2000)).

involvement in shipping operations. By removing the courts from this regulatory process, Congress removed the potential for continuing regulatory uncertainty " *Id.* at 184–85

Despite the persuasive legislative history and caselaw in support, it is true that Defendants did not provide—and the Court could not locate—a case explicitly holding that the Shipping Act impliedly preempts state law claims. Nevertheless, the Court is not otherwise persuaded by the cases cited by IPPs. For example, although *Oneok, Inc. v Learjet, Inc.* stands for the proposition that the "broad applicability of state antitrust law supports a finding of no [field] pre-emption," 135 S. Ct. 1591, 1601 (2015), the *Oneok* Court expressly declined to engage in conflict preemption analysis, *see id.* at 1595, 1602. Similarly, in *Aubry* and *Wylie*, reference to the "Shipping Act" is to a different statute than the one before the Court here,[14] and the facts are readily distinguishable since the issue was whether additional employee-related requirements under state law, such as the payment of a higher rate of wages or hiring of additional crew members, conflicted with the statute. *See Pac. Merch. Shipping Ass'n v Aubry*, 918 F.2d 1409 (9th Cir 1990) (holding that California overtime pay laws not preempted by 46 U.S C. § 8104(b)); *Wylie v Foss Mar Co.*, No. 06-7228, 2008 WL 4104304 (N.D Cal. Sept. 4, 2008) (relying on *Aubry* to conclude that California labor statutes not preempted by 46 U.S.C. § 8104(b)). And although the Texas Court of Appeals held in *Zachry-Dillingham v American President Lines, Ltd.* that conflict preemption did not operate to bar a claim relating to tariff rates under the Texas Deceptive Trade Practices Act ("DTPA"), that decision is entirely devoid of analysis with respect to Congress's purposes of minimizing government intervention and regulatory costs. *See* 739 S.W.2d 420, 423 (Tex. App. 1987), *writ denied* (Jan. 27, 1988) ("The

[14] *Compare* 46 U.S.C. §§ 2101–14701 (Subtitle II – Vessels and Seamen), *with* 46 U.S.C. §§ 40101–41309 (Subtitle IV – Regulation of Ocean Shipping). Indeed, Subtitle II does not mention the FMC, and instead references the Department of Homeland Security *See, e.g.*, 46 U.S.C. § 2104 note.

grant of immunity from the Texas DTPA would provide carriers with a shield whose existence is not directly related to the accomplishment or the purpose of the tariff filing requirements. Immunity is not necessary to the accomplishment of any congressional objective expressed by the Shipping Act."). These cases are thus distinguishable from the Court's analysis.

With this history and caselaw in mind, the Court concludes that IPPs' proposed application of state law conflicts with the congressional purpose of minimizing government intervention and regulatory costs. 46 U.S.C. § 40101(1). Permitting private actions under a patchwork of state laws for the same exact conduct that is exempt from federal antitrust law, 46 U.S.C. § 40307(d), and within the purview of the FMC complaint process, *id.* § 41301, directly undermines the "certainty and predictability" Congress sought to achieve in passing the Shipping Act of 1984 *See* House Report at 4, 169; *see also id.* at 25, 190 ("[T]o the greatest extent possible, members of the ocean liner industry should be . free of vague standards, or threatened penalties under changing interpretations of antitrust laws."). The state laws at issue cannot consistently stand together with the statutory scheme and Congress's stated purposes in passing the Shipping Act of 1984 and are therefore preempted.[15] In reaching this holding the Court emphasizes that the putative class members can seek relief before the FMC, 46 U.S.C. § 41301(a), and then bring actions in district court as appropriate and consistent with Congress's full intent, *see* 46 U.S.C. § 41306 (after filing complaint with FMC, complainant may bring civil action in a district court for injunctive relief); *id.* § 41309 (injured party who is awarded reparations by the FMC may seek enforcement of the order in a district court).

[15] Because the Court concludes that the state laws at issue conflict with the federal law, it does not address whether field preemption applies. *See Crosby*, 530 U.S. at 374 n.8 (declining to address field preemption after finding of conflict preemption).

VI. CONCLUSION

For the reasons above, the motions to dismiss are granted. An appropriate Order accompanies this Opinion.

s/ Esther Salas
Esther Salas, U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE VEHICLE CARRIER SERVICES ANTITRUST LITIGATION *This Document Relates To All Actions*	**Master Docket No.: 13-3306 (ES)** **(MDL No. 2471)** **ORDER**

SALAS, DISTRICT JUDGE

Before the Court are the following motions. Defendants' Consolidated Motion to Dismiss the Indirect Purchasers' Complaints, (D.E. No. 209); End-Payor Plaintiffs' Request for Judicial Notice in Support of Response to Defendants' Motion to Dismiss Indirect Purchaser Actions, (D.E. No. 212); Defendants' Consolidated Motion to Dismiss the Direct Purchasers' Complaint, (D.E. No. 218); Defendant EUKOR Car Carriers, Inc.'s Motion to Dismiss All Complaints, (D.E. No. 214); Höegh Defendants' Motion to Dismiss the Direct Purchasers' Complaint, (D.E. No. 227); and Höegh Defendants' Motion to Dismiss the Indirect Purchasers' Complaints, (D.E. No. 230).

For the reasons set forth in the Court's corresponding Opinion,

IT IS on this 28th day of August 2015, hereby

ORDERED that End-Payor Plaintiffs' Request for Judicial Notice in Support of Response to Defendants' Motion to Dismiss Indirect Purchaser Actions, (D.E. No. 212), is GRANTED; and it is further

ORDERED that Defendants' Consolidated Motion to Dismiss the Indirect Purchasers' Complaints, (D.E. No. 209), and Defendants' Consolidated Motion to Dismiss the Direct Purchasers' Complaint, (D.E. No 218), are GRANTED; and it is further

ORDERED that Defendant EUKOR Car Carriers, Inc.'s Motion to Dismiss All Complaints, (D.E. No. 214), Höegh Defendants' Motion to Dismiss the Direct Purchasers' Complaint, (D.E. No. 227), and Höegh Defendants' Motion to Dismiss the Indirect Purchasers' Complaints, (D.E. No. 230), are DENIED as moot; and it is further

ORDERED that the Complaints at issue—D.E. No. 142, Direct Purchaser Plaintiff Consolidated Amended Class Action Complaint; D.E. No. 183, End-Payor Plaintiff Second Consolidated Amended Class Action Complaint; D.E. No. 199, Automobile Dealer Second Consolidated Amended Class Action Complaint; No. 14-4469, D.E. No. 1, Truck and Equipment Dealer Class Action Complaint—are hereby dismissed *with* prejudice.

SO ORDERED.

s/ Esther Salas
Esther Salas, U.S.D.J.

EXHIBIT "C"

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In Re: Vehicle Carrier Services Antitrust Litigation	Master Docket No. 13-cv-3306 (ES) (MDL No 2471)
This Document Relates to *All Direct Purchaser Actions*	

NOTICE OF APPEAL

Notice is hereby given that, in accordance with Federal Rules of Appellate Procedure 3 and 4, and 28 U S C § 1291, Direct Purchaser Plaintiffs Cargo Agents, Inc., International Transport Management, Corp., and Manaco International Forwarders, Inc. ("DPPs") in the above-captioned case, hereby appeal to the United States Court of Appeals for the Third Circuit from the Opinion and Order of the Honorable Esther Salas, U S.D.J. entered on August 28, 2015 [ECF Nos. 275 and 276] dismissing the DPPs' Consolidated Amended Class Action Complaint.

Dated. September 25, 2015

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CERTIFICATE OF SERVICE

I, Lewis H. Goldfarb, hereby certify that on September 25, 2015, I caused true and correct copies of the foregoing Notice of Appeal to be delivered to all parties of record via the Court's CM/ECF system.

/s/ Lewis H. Goldfarb

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: VEHICLE CARRIER SERVICES **ANTITRUST LITIGATION** THIS DOCUMENT RELATES TO: *All Automobile Dealer Actions* *Case No. 13-cv-6609*	Master Doc. No. 13-cv-3306 (ES)(JAD) (MDL No. 2471) Judge Salas

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Plaintiff Martens Cars of Washington, Inc., Hudson Charleston Acquisition, LLC; Hudson Nissan, John O'Neil Johnson Toyota, LLC, Hudson Gastonia Acquisition, LLC, HC Acquisition, LLC d/b/a Toyota of Bristol; Desert European Motorcars, Ltd, Hodges Imported Cars, Inc. d/b/a Hodges Subaru; Scotland Car Yard Enterprises d/b/a San Rafael Mitsubishi; Hartley Buick/GMC Truck, Inc. d/b/a Hartley Honda, Panama City Automotive Group, Inc.

d/b/a John Lee Nissan, and Empire Nissan of Santa Rosa, LLC, on behalf of themselves and all others similarly situated,[1] by and through their counsel, hereby appeal to the United States Court of Appeals for the Third Circuit from the Court's Orders" entered August 28, 2015 (Case No 13-cv-3306, ECF Nos. 275 and 276)and September 10, 2015 (Case No. 13-cv- 06609, EFC No 27), and all orders subsumed therein.

September 25, 2014

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[1] The Automobile Dealer Class is defined as, "All automobile dealers that purchased new Vehicles shipped during the Class Period as to which one or more Defendants or any current or former subsidiary or affiliate thereof or any co-conspirator provided Vehicle Carrier Services." *See* Automobile Dealers Second Amended Complaint (ECF No. 133).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of September 2015, I will electronically file NOTICE OF APPEAL with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all parties of record.

September 25, 2015

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

In Re: Vehicle Carrier Services Antitrust Litigation *This Document Relates To* *All End-Payor Actions and* *All Truck and Equipment Dealer Actions*	Master Docket No. 13-cv-3306 (MDL No. 2471)

NOTICE OF APPEAL

Notice is hereby given that End-Payor Plaintiffs[1] and Truck and Equipment Dealer Plaintiffs,[2] plaintiffs in the above named case, hereby appeal to the United States Court of Appeals for the Third Circuit from the Order granting Defendants' Motions to Dismiss, dated and entered in this action by the District Court named above on August 28, 2015, (Docket No. 276).

Dated. September 25, 2015

Respectfully submitted,

By: */s/ Warren T. Burns*
Warren T Burns

[1] End-Payor Plaintiffs include: Jill M. Alban, Grant M. Alban, Mary Arnold, Al Baker, Katrina Bonar, Emmett R. Brophy, Steven Bruzonsky, Monica Bushey, Craig Buske, Doda "Danny" Camaj, Stephanie B. Crosby, Melinda Deneau, Jennifer Dillon, Jeffrey L. Gannon, Pamela Goessling, Thomas Goessling, Sean Gurney, Sheryl Haley, Lesley Denise Hart, Bruce Hertz, Elizabeth Ashley Hill nèe Edwards, Maria Kooken, Adair Lara, Christine Laster, Kori Lehrkamp, Michael Lehrkamp, John Leyva, Joan MacQuarrie, Daniel Morris, Tony Nikprelaj, Gustavo Adolfo Perez, Judy A. Reiber, Roberta Rothstein, Jeffrey Rubinstein, Alexandra Scott, Jason Smith, Catherine Taylor, Richard Tomasko, and Demian Vargas, on behalf of themselves and all others similarly situated.

[2] Truck and Equipment Dealer Plaintiffs include: Rush Truck Centers of Arizona, Inc., Rush Truck Centers of California, Inc., Rush Truck Centers of Colorado, Inc., Rush Truck Centers of Florida, Inc., Rush Truck Centers of Georgia, Inc., Rush Truck Centers of Idaho, Inc., Rush Truck Centers of Kansas, Inc., Rush Truck Centers of North Carolina, Inc., Rush Truck Centers of Ohio, Inc., Rush Truck Centers of Oklahoma, Inc., Rush Truck Centers of Texas, LP; and Rush Truck Centers of Utah, Inc.

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Truck and Equipment Dealer Plaintiff Counsel

CERTIFICATE OF SERVICE

This is to certify that on September 25, 2015, a true and correct copy of the foregoing instrument was filed with the United States District Court for the District of New Jersey via the Court's CM/ECF system, thereby causing copies to be electronically served upon all counsel of record.

/s/ Warren T. Burns
Warren T Burns

EXHIBIT "F"

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 15-3353, 15-3354 & 15-3355

In Re: Vehicle Carrier Services Antitrust Litigation
(D.N.J No. 2-13-cv-03306)

ORDER

The appeals at Nos. 15-3353, 15-3354, and 15-3355 are hereby consolidated for purposes of scheduling, joint appendix, and disposition. Appellants are encouraged to consult with one another regarding the contents of their briefs as the Court disfavors repetitive briefs. The parties may file a consolidated brief or join in or adopt portions by reference. See Fed. R. App. P 28(i). Appellees may elect to file a consolidated brief.

The parties are hereby directed to electronically file documents on the Court's docket as follows.

Appellants. All case opening forms, motions, and briefs must be filed only in the appeal number assigned to the filer's notice of appeal. If a document is being filed jointly by multiple appellants, the document must be filed only in the appeal numbers assigned to the filing appellants.

Appellees. All case opening forms must be filed in all appeals in which the appellee intends to participate. All motions should be filed only in those cases for which the relief is being requested. All responsive briefs should be filed only in the appeal to which the appellee is responding. If the appellee is filing a consolidated response brief, the brief must be filed in all appeals to which the appellee is responding.

The consolidated joint appendix must be filed in all appeal numbers.

The parties are advised that case opening forms for later filed appeals must only be filed in the new appeals and not re-filed in earlier appeals in which the forms were previously filed.

The parties are further advised that failure to file documents in the appropriate case may result in the issuance of a noncompliance order If any party is unsure how to file a particular document, he or she should call the case manager prior to filing the document.

For the Court,

s/ Marcia M. Waldron
Clerk

Dated. October 9, 2015
JK/cc: All Counsel on Record

EXHIBIT "G"

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 15-3353, 15-3354 & 15-3355

In re: Vehicle Carrier Service

(District Court No. 2-13-cv-3306)

ORDER

It appearing that a timely post-decision motion of a type specified by Fed. R. App. P 4(a)(4), is pending in the District Court, it is hereby ORDERED that the above-entitled appeal(s) is(are) stayed pending disposition of the motion. The parties are directed to file written reports addressing the status of the pending motion on **11/09/2015** and every thirty (30) days thereafter until the last motion is decided. The stay will automatically expire upon entry of the order disposing of the last post-decision motion.

This stay does not apply to the obligation to pay filing and docketing fees or the filing of the case opening forms. These obligations must be fulfilled within the time specified by the Federal Rules of Appellate Procedure and Third Circuit Local Appellate Rules.

It should be noted that, pursuant to Fed. R. App. P 4(a)(4)(B)(ii), any party who wishes to challenge the order disposing of the post-decision motion must file a notice of appeal, or an amended notice of appeal. The notice of appeal or amended notice of appeal must be filed within the time prescribed by Fed. R. App. P 4(a), measured from the date of entry of order disposing of the last remaining post-decision motion.

For the Court,

Marcia M. Waldron

Marcia M. Waldron, Clerk

Dated. October 9, 2015
JK/cc. All Counsel of Record

A True Copy:

Marcia M. Waldron

Marcia M Waldron, Clerk

EXHIBIT "H"

BEFORE THE FEDERAL MARITIME COMMISSION

CARGO AGENTS, INC., INTERNATIONAL TRANSPORT MANAGEMENT CORP., and RCL AGENCIES, INC., on behalf of themselves and all others similarly situated,

Complainants,

-against-

NIPPON YUSEN KABUSHIKI KAISHA, NYK LINE (NORTH AMERICA) INC., MITSUI O.S.K. LINES, LTD., MITSUI O.S.K. BULK SHIPPING (USA) INC., WORLD LOGISTICS SERVICE (U.S.A.) INC., KAWASAKI KISEN KAISHA, LTD., "K" LINE AMERICA, INC., EUKOR CAR CARRIERS INC., WALLENIUS WILHELMSEN LOGISTICS AS, WALLENIUS WILHELMSEN LOGISTICS AMERICAS LLC, COMPAÑIA SUD AMERICANA DE VAPORES S.A., CSAV AGENCY NORTH AMERICA, LLC, HÖEGH AUTOLINERS HOLDINGS AS, HÖEGH AUTOLINERS AS, HÖEGH AUTOLINERS, INC., AUTOTRANS AS, ALLIANCE NAVIGATION LLC, and NISSAN MOTOR CAR CARRIER CO., LTD

Respondents.

Docket No. 16-01

CLASS ACTION COMPLAINT

TABLE OF CONTENTS

INTRODUCTION

1 Complainants Cargo Agents, Inc., International Transport Management, Corp., and RCL Agencies, Inc., by their undersigned attorneys, individually and on behalf of all others similarly situated, bring this Complaint to recover reparations and the costs of suit, including reasonable attorneys' fees, for their injuries and those of the members of the proposed Class (as defined below) resulting from Respondents' violations of provisions of the Shipping Act of 1984, 46 U.S.C. § 40101 *et seq.* (the "Shipping Act"), including 46 U.S.C. §§ 40302(a), 41102(b)(1), 41102(c), 41104(10), 41105, and 46 CFR § 535.401 *et seq.*

NATURE OF THE CLAIMS

2. Respondents are the largest providers of deep sea vehicle transport services ("Vehicle Carrier Services," described more fully below) in the world, including for shipments to and from the United States. Since at least February 1997, Respondents have conspired to allocate customers and markets, to rig bids, to restrict supply, and otherwise to raise, fix, stabilize, or maintain prices for Vehicle Carrier Services for shipments to and from the United States, pursuant to agreements between and among them that were not filed with the Federal Maritime Commission ("FMC" or the "Commission") and that otherwise violated the Shipping Act and regulations promulgated thereunder Respondents' conspiracy and agreements caused Complainants and others who directly purchased Vehicle Carrier Services from Respondents to pay artificially inflated prices.

3. Competition authorities in the United States, Canada, Japan, and the European Union ("EU") have been actively investigating anticompetitive practices with respect to Vehicle Carrier Services. Respondents CSAV, "K" Line Japan, and NYK Japan (defined below, respectively) have all pled guilty to criminal Informations filed by the United States Department

of Justice ("DOJ") for conspiring to suppress and eliminate competition by allocating customers and routes, rigging bids, and fixing prices for Vehicle Carrier Services to and from the United States and elsewhere in violation of Section 1 of the Sherman Act, 15 U.S C. § 1 The Japan Fair Trade Commission ("JFTC") has also issued cease and desist orders and fines against Respondents NYK Line, "K" Line, WWL, and NMCC. Additionally, at least three executives of "K" Line Japan and at least one executive of NYK Japan have pled guilty to Sherman Act violations, and the DOJ has indicted at least three additional former executives of Respondents NYK Japan and "K" Line Japan for conspiring to fix prices and suppress competition in the market for Vehicle Carrier Services in violation of the Sherman Act.

4 Complainants bring this Complaint on behalf of themselves and all other persons or entities who purchased Vehicle Carrier Services directly from one or more Respondents for shipments to and from the United States between February 1997 and December 31, 2012 (the "Class Period") to recover damages sustained as a result of Respondents' unlawful conduct.

JURISDICTION AND VENUE

5 The FMC has jurisdiction over this Complaint under the Shipping Act, including 46 U.S.C. §§ 41301 and 41305 This Complaint alleges that Respondents have entered into secret, unfiled, and unlawful agreements to allocate customers and markets, rig bids, restrict supply, and to otherwise raise, fix, stabilize, or maintain prices for Vehicle Carrier Services for shipments to and from the United States, in violation of provisions of the Shipping Act, including 46 U.S.C. §§ 40302(a), 41102(b)(1), 41102(c), 41104(10), 41105, and 46 CFR § 535.401 *et seq.*

6. The activities of Respondents and their co-conspirators, as alleged in this Complaint: (a) constituted United States interstate trade or commerce; (b) constituted United

States import trade or import commerce; or (c) were within the flow of and had a direct, substantial, and reasonably foreseeable effect on United States domestic trade or commerce or United States import trade or commerce. Given the volume of affected commerce, such effects were direct and substantial.

7 The Commission has personal jurisdiction over each Respondent because each Respondent is a "common carrier" and "ocean common carrier" as defined in the Shipping Act, 46 U.S.C. § 40102(6) and (17). Each Respondent further (a) transacted business within the United States; (b) directly sold Vehicle Carrier Services within the United States; (c) had substantial aggregate contacts with the United States as a whole; and (d) was engaged in an illegal conspiracy directed at, and which had a direct, substantial, reasonably foreseeable, and intended effect of, causing injury to the business or property of persons and entities residing in, located in, or doing business within the United States. Respondents conduct business within the United States, and they have purposefully availed themselves of the laws of the United States.

PARTIES

Complainants

8. Complainant Cargo Agents, Inc., ("Cargo Agents") is a Wyoming corporation with its principal place of business in Flushing, NY Cargo Agents' address is 143-30 38th Ave., Suite 1H, Flushing, NY 11354-5742, and its email address is mail@cargoagents.net. Cargo Agents directly purchased Vehicle Carrier Services from one or more Respondents during the Class Period and was directly injured as a result.

9 Complainant International Transport Management Corp. ("ITM") is a New Jersey corporation with its principal place of business in New Jersey ITM's address is 15 Main St., Unit 951, Flemington, NJ 08822, and its email address is itm@itm-corp.com. ITM directly

purchased Vehicle Carrier Services from one or more Respondents during the Class Period and was directly injured as a result.

10. Complainant RCL Agencies, Inc. ("RCL") is a New Jersey corporation with principal place of business in Clifton, New Jersey RCL's address is 842 Clifton Ave., Clifton NJ, 07869, and the business email address of its President, Patrick Costin, is patrck.costin@oceanfreight.com. RCL purchased Vehicle Carrier Services from one or more Respondents during the Class Period and was directly injured as a result.

Respondents

11 Respondent Nippon Yusen Kabushiki Kaisha ("NYK Japan") is a Japanese company with its principal place of business in the Yusen Building, Marunouchi, Chiyoda, Tokyo 100-0005, Japan. Respondent NYK Line (North America) Inc. ("NYK America") is a wholly-owned subsidiary of NYK Japan with its principal place of business at 300 Lighting Way, Secaucus, NJ 07094 During the Class Period, NYK Japan and NYK America (collectively, "NYK Line"), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

12. Respondent Mitsui O.S.K. Lines, Ltd., ("MOL Japan") is a Japanese company with its principal place of business in Toranomon, Minato, Tokyo 105-0001, Japan. Respondent Mitsui O.S.K. Bulk Shipping (USA), Inc., ("MOBUSA") is a subsidiary of MOL Japan with its principal place of business at 1710 Plaza Five, Jersey City, NJ 07311 Respondent World Logistics Service (U.S.A.) Inc. ("WLS") is a subsidiary of MOL Japan with its principal place of business at 111 West Ocean Blvd., Suite 1040, Long Beach, California 90802-4622. Respondent Nissan Motor Car Carrier Co., Ltd., ("NMCC") is a Japanese company with its principal place of

business Hibiya Daibiru Bldg., 1-2-2 Uchisaiwai-cho, Chiyoda-ku, Tokyo 100-0011, Japan. Since 2009, NMCC has been owned 70% by MOL Japan, 20% by HAL (defined below), and 10% by Nissan Motor Co., Ltd. ("Nissan"). From 1998 to 2009, NMCC was owned 40% by MOL Japan and 60% by Nissan. During the Class Period, MOL Japan, MOBUSA, WLS, and NMCC (collectively, "MOL"), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

13 Respondent Kawasaki Kisen Kaisha, Ltd., ("'K' Line Japan") is a Japanese company with its principal place of business in the Iino Building, 1-1, Uchisaiwaicho 2-Chome, Chiyoda-ku, Tokyo 100-8540, Japan. Respondent "K" Line America, Inc., ("'K' Line America") is a wholly-owned subsidiary of "K" Line Japan with its principal place of business at 8730 Stony Point Parkway, Suite 400, Richmond, Virginia 23235 During the Class Period, "K" Line Japan and "K" Line America (collectively, "'K' Line"), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

14 Respondent EUKOR Car Carriers Inc. ("EUKOR") is a South Korean company with its principal place of business at 24F Gangnam Finance Center, 152 Teheran-ro, Gangnam-gu, Seoul, South Korea, 135-984 EUKOR is a joint venture: Wilh. Wilhelmsen ASA (co-owner of WWL Norway, defined below) owns 40%, Wallenius Lines AB (co-owner of WWL Norway, defined below) owns 40%, and Hyundai Motor Company and Kia Motors Corporation collectively own 20% During the Class Period, EUKOR, directly or through its wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

15 Respondent Wallenius Wilhelmsen Logistics AS ("WWL Norway") is a Norwegian company with its principal place of business at Strandveien 20, 1366 Lysaker, Norway Respondent Wallenius Wilhelmsen Logistics Americas LLC ("WWL America") is a wholly-owned subsidiary of WWL Norway with its principal place of business at 188 Broadway # 1, Woodcliff Lake, New Jersey 07677 During the Class Period, WWL Norway and WWL America (collectively, "WWL"), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

16. Respondent Compañia Sud Americana de Vapores S.A. ("CSAV Chile") is a Chilean company with its principal place of business at Blanco # 937, Edificio Tecnopacifico, Piso 1, Valparaiso, Chile. Respondent CSAV Agency North America, LLC ("CSAV Agency") is a wholly-owned subsidiary of CSAV Chile, with its principal place of business located at 99 Wood Avenue South, 9th Floor Iselin, NJ 08830. During the Class Period, CSAV Chile and CSAV Agency (collectively, "CSAV"), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

17 Respondent Höegh Autoliners Holdings AS ("HAL Holdings") is a Norwegian company with its principal place of business at Drammensveien 134, Oslo, Norway (mailing address P.O Box 4 Skøyen - 0212, Oslo, Norway). Respondent Höegh Autoliners AS ("HAL AS") is a wholly-owned subsidiary of HAL Holdings with the same principal business address as HAL Holdings. Respondent AUTOTRANS AS ("AUTOTRANS") is a wholly-owned subsidiary of HAL Holdings with its principal place of business at 167 Av des Grésillons, 92230 Gennevilliers, France. Respondent Höegh Autoliners, Inc. ("HAL Inc.") is a wholly-owned

subsidiary of HAL Holdings with its principal place of business at 5263 Intermodal Dr, Jacksonville, FL 32226. Respondent Alliance Navigation LLC ("Alliance") is a wholly-owned affiliate of HAL Inc. with its principal place of business at 2615 Port Industrial Drive, Suite 405, Jacksonville, FL 32226. During the Class Period, HAL Holdings, HAL AS, AUTOTRANS, HAL Inc., and Alliance (collectively, "HAL"), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

Agents and Co-Conspirators

18. Various other individuals, firms, and corporations, not named as Respondents in this Complaint, may have participated as co-conspirators with Respondents and performed acts and made statements in furtherance of the conspiracy Complainants reserve the right to name some or all of these individuals, firms, and corporations as Respondents.

19 Whenever in this Complaint reference is made to any act, deed, or transaction of any corporation or limited liability entity, the allegation means that the corporation or limited liability entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while actively engaged in the management, direction, control, or transaction of the corporation's or limited liability entity's business or affairs.

BACKGROUND ON VEHICLE CARRIER SERVICES

20. Vehicle Carrier Services involve transporting any type of wheeled freight on large, ocean-shipping vessels on deep-sea routes. The freight shipped includes all types of vehicles, including cars, trucks, construction vehicles, tracked vehicles and machines (such as excavators or bulldozers), tractors, trailers, capital equipment vehicles used in construction, agriculture, and mining, and other types of wheeled freight.

21 Vehicle Carrier Services involve the use of specialized vessels equipped with ramps such that wheeled freight can be rolled on or rolled off of the vessels. The term "RoRo" is often used to refer to these vessels ("RoRo Vessels") or to the transport of vehicles on such vessels ("RoRo Shipping").

22. There are two types of RoRo vessels. Pure Car Carriers ("PCCs") and Pure Car and Truck Carriers ("PCTCs"). PCCs were designed exclusively for the movement of passenger cars (and possibly small trucks). They can be thought of as movable parking garages with up to 10 to 12 levels (or decks) PCTCs were designed to carry cars and trucks. The main distinguishing feature between PCTCs and PCCs is that PCTCs are equipped with hydraulics that can move the decks within the vessel to enable the vessel to carry vehicles of varying sizes.

23 Although some smaller-wheeled freight conceivably can be put into containers and loaded by crane onto a container ship, transporting such vehicles on RoRo vessels is the preferred method because:

a. To transport a vehicle inside a container, special inserts are typically placed inside the container to maximize the number of vehicles that can fit inside;

b. Once a vehicle is driven into a container, it needs to be secured within the container and then transported to a port to be loaded by crane onto a vessel,

c. The steps outlined above take considerably more time than rolling vehicles onto RoRo vessels and are associated with additional costs,

d. The cost of shipping a vehicle in a container is typically higher than, and can be as much as two to three times the cost of, shipping that same vehicle via a RoRo vessel,

e. Vehicles may be damaged when they are driven in and out of containers, and their close proximity during shipping can also cause damage; and

f. If multiple vehicles are placed inside a container in a stacked fashion, there is a risk that oil or other fluids from one car can leak on other cars, also causing damage.

24 There are no reasonable substitutes for Vehicle Carrier Services for shipping wheeled freight over deep seas.

25 Complainants and members of the proposed Class (collectively, "Direct Purchasers") include companies that arrange for the international ocean transportation of vehicles and other individuals or entities purchasing directly from any Respondent (or from any current or former subsidiary or affiliate of any Respondent) Vehicle Carrier Services for shipments to and from the United States.

SUSCEPTIBILITY OF VEHICLE CARRIER SERVICES TO COLLUSION

26. Vehicle Carrier Services are particularly susceptible to collusion because of high concentration, the commodity-like nature of the services at issue, high barriers to entry, inelasticity of demand, and ample opportunities for the Respondents to meet and collude.

Concentration

27 During the Class Period, Respondents accounted for roughly two-thirds or more of the global capacity of Vehicle Carrier Services.

Commodity-Like Services

28. Vehicle Carrier Services are homogeneous, commodity-like services. Purchasers of Vehicle Carrier Services choose providers almost exclusively based on price, because the

qualitative differences between each provider are negligible. Thus, from the purchasers' perspective, providers of Vehicle Carrier Servicers are essentially interchangeable.

29 The homogenous and interchangeable nature of Vehicle Carrier Services makes it easier to create and maintain an unlawful conspiracy, agreement, or cartel because coordinating conduct and prices, as well as policing those collusively set prices, is less difficult than if Respondents had distinctive services that could be differentiated based upon features other than price.

Barriers to Entry

30. There are substantial entry barriers that a new provider of Vehicle Carrier Services would face. A new entrant would encounter significant hurdles, including multi-million dollar start-up costs associated with acquiring ships and equipment, distribution infrastructure, and hiring skilled labor and a sales force.

31 Additionally, the lack of reputation and customer relationships can be problematic for a new entrant; at least one Respondent has publicly stated that the strong relationships that vehicle carriers forge with their customers create high barriers to entry

Demand Inelasticity

32. Demand for Vehicle Carrier Services is highly inelastic because there are no close substitutes. A RoRo vessel is built specifically to transport the large, irregular shapes of wheeled vehicles and to enable those vehicles to be quickly and efficiently loaded to and unloaded from the vessel.

33 Therefore, a price increase in Vehicle Carrier Services does not induce purchasers into using other types of cargo vessels or services. By allowing producers to raise prices without triggering customer substitution and lost sales revenue, inelastic demand facilitates collusion.

Opportunities for Conspiratorial Communications

34 The shipping industry has been characterized as a small world where many of the key figures know each other Many employees of the Respondents have spent their entire careers in the shipping industry Key employees have also transferred between the Respondent companies, fostering familiarity and connections between professed competitors and facilitating high-level coordination for the conspiracy

35 Respondents are members of several trade associations that provide opportunities to meet under the auspices of legitimate business. For example, several Respondents are members of the ASF Shipping Economics Review Committee. The Committee had meetings, including one in Tokyo on March 2, 2010 that was attended by representatives of several Respondents, including executives who will be identified herein as "K" Line Executive 1 and NYK Line Executive 1

36. Respondents CSAV (through its subsidiary CSAV Agency), NYK America, "K" Line America, MOL (through its subsidiary, MOL (America), Inc.), and WWL America are members of the United States Maritime Alliance, Ltd.

37 Respondents "K" Line, MOL, NYK America, and WWL America are members of the New York Shipping Association, Inc.

38. Respondents "K" Line, MOL (through its subsidiary, MOL (America) Inc.), NYK Line, and WWL are members of the Pacific Maritime Association.

39 Respondents CSAV, "K" Line, MOL, NYK Line, and WWL are members of the World Shipping Council.

40. Respondents CSAV, "K" Line, MOL, and NYK Line were members of the European Liner Affairs Association, which was later absorbed by the World Shipping Council.

41 Respondents NYK Line, "K" Line, and MOL are members of the Japanese Shipowners' Association, a trade association based in Japan.

42. These associations—and the meetings, trade shows, and other industry events that stem from them—provided Respondents with ample opportunities to meet and conspire, as well as to perform affirmative acts in furtherance of the conspiracy

43. Respondents also routinely enter into vessel-sharing agreements whereby they reserve space on each other's ships. These sharing or chartering agreements are very common in the international maritime shipping industry

44 A "space charter" occurs when a shipping carrier charters space on another shipping carrier's vessel. The opportunity for a space charter arises when a shipping carrier has less than full capacity on its ship and another shipping carrier needs additional capacity

45 A "time charter" occurs when a shipping carrier fully charters another vehicle carrier's vessel. The opportunity for a time charter arises when a vehicle carrier would otherwise send a vessel home empty and another vehicle carrier needs space.

46. While ostensibly entered into to optimize utilization and increase efficiency, such sharing and chartering agreements also provided opportunities for Respondents to discuss Vehicle Carrier Services market shares, routes, and rates and to engage in illegal conspiracies to fix prices, rig bids, and allocate customers and markets.

RESPONDENTS' ANTICOMPETITIVE CONDUCT

47 Since at least February 1997, Respondents have engaged in a continuous and wide-ranging conspiracy to restrain competition for the sale of Vehicle Carrier Services. Respondents have conspired to fix (and have fixed) prices for Vehicle Carrier Services, to allocate (and have allocated) customers for Vehicle Carrier Services, and to restrict (and have

restricted) the supply of Vehicle Carrier Services. Respondents' conspiracy has resulted in higher prices of Vehicle Carrier Services for shipments to and from the United States.

48. Complainants plead the following known anticompetitive acts as exemplars of Respondents' conduct in the provision of Vehicle Carrier Services; Respondents' persistent and pervasive acts restrained trade and caused prices to be artificially inflated in the sale of Vehicle Carrier Services for shipments to and from the United States.

49 Because Respondents' conspiracy was secret in nature, and because Respondents took steps to conceal their anticompetitive agreements, Complainants cannot yet know all the ways that Respondents conspired. On information and belief, Complainants allege that Respondents engaged in acts in furtherance of their conspiracy in addition to those specifically alleged in this Complaint, and that such additional acts also restrained trade in the sale of Vehicle Carrier Services for shipments to and from the United States.

Respondents Conspired to Reduce Vehicle Carrier Services Fleet Capacity

50. During the Class Period, Respondents' executives had frequent communications regarding reducing Vehicle Carrier Services capacity, and they reached agreements concerning the capacity reduction. These capacity reductions, and the higher prices that resulted from them, were an effect of Respondents' conspiracy and were not caused by natural market forces.

51 Respondents reduced capacity by agreeing to scrap and "layup" vessels. Scrapping refers to destroying a vessel by breaking it up and selling the pieces for scrap. A layup occurs when a vessel is taken out of commission but not scrapped. In a "cold layup," the vessel sits idle without a crew and is not maintained. In a "hot layup," the vessel is staffed and maintained but not put into service. The costs for putting a vessel back into service are higher after a cold layup than after a hot layup.

52. During the Class Period, the Respondents discussed scrapping vessels, vessel layups, and plans for building new vessels. In connection with those discussions, Respondents reached agreements to control or reduce capacity, which resulted in artificially inflated prices for Vehicle Carrier Services for shipments to and from the United States.

53. For instance, from the late 1990s through 2002, executives from MOL, "K" Line, NYK Line, HAL, and WWL met twice a year—once in Japan and once in Europe—to discuss and agree on vessel scrapping and building plans and to exchange data. They also discussed Vehicle Carrier Services pricing for routes where they believed prices were particularly low These Respondents continued their data exchange into 2003

54 In 2008, demand for Vehicle Carrier Services fell dramatically as a result of the worldwide financial crisis, leaving Respondents with excess capacity In response, Respondents conspired to reduce the supply of Vehicle Carrier Services by engaging in a number of acts, including the following:

a. In late 2008 or early 2009, executives from MOL and NYK Line met and agreed to reduce their respective fleet sizes by scrapping RoRo vessels. They also agreed to resist price reduction requests from customers.

b. "K" Line likewise agreed to scrap some of its vessels after being approached by MOL or NYK Line.

c. During late 2008 to early 2009, MOL also discussed fleet reductions and reached understandings concerning such reductions with WWL, HAL, and EUKOR.

d. In or around 2009, WWL, HAL, and "K" Line agreed to layup RoRo vessels to reduce capacity

e. MOL Executive 1, Mr Kato of NYK Line,[1] WWL Executive 1, HAL Executive 1, and "K" Line Executive 1 were involved in these discussions and ensuing agreements to scrap or layup vessels.

f. As a result of Respondents' agreements, MOL scrapped approximately 40 vessels, NYK Line scrapped approximately 40 vessels, "K" Line scrapped approximately 25 vessels, and HAL scrapped approximately 10 vessels. In total, the Respondents scrapped at least 20 percent of the vessels across the industry and placed an additional 15 percent of PCTCs in layups.

g. Almost no orders for new vessels were placed between 2009 and 2011

55 In addition to scrapping and layups, Respondents controlled excess capacity by "slow steaming" their RoRo vessels to create artificial supply shortages. This practice lowers the speed of the vessels and increases sailing time, which in turn decreases capacity As a result of the Respondents' agreements to slow-steam their vessels, by mid-2011, NYK Line, "K" Line, and MOL had reduced speeds on nearly every vessel, and NYK Line reduced PCTC speeds from 18-20 to 12-15 knots.

56. The Respondents' agreements to control or reduce capacity through vessel scrapping, layups, and slow-steaming reduced capacity and resulted in artificially high prices paid by Complainants and Class Members for Vehicle Carrier Services on shipments to and from the United States during the Class Period.

57 The agreements described above were never filed with the Commission and never became effective under the Shipping Act.

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[1] Mr Kato is identified by name because his name was made public in a DOJ indictment filed October 6, 2015 Other Respondent executives identified herein by name have also had their identities made public by DOJ indictments, criminal Informations, and/or guilty pleas.

Respondents Conspired to Fix, Raise, or Artificially Maintain Prices for Vehicle Carrier Services

58. In addition to their communications and agreements to control or reduce capacity, Respondents met periodically throughout the Class Period and agreed on the prices to charge for Vehicle Carrier Services. The following are some examples:

a. Beginning in February 1997, MOL, NYK Line, and "K" Line met multiple times at MOL's office in Tokyo to discuss the upcoming renewal of a customer's contract for Vehicle Carrier Services. Participants at these meetings included Messrs. NYK Line Executives 2 and 3, and "K" Line Executive 2 and "K" Line Executive 6. Representatives from MOL, NYK Line, and "K" Line agreed that each would ask customers for a price increase for the shipment of vehicles from Japan to the United States and from the United States to Japan.

b. Around 2002 or 2003, MOL and "K" Line were both shipping vehicles from Europe to North America and agreed to each request a 3% to 5% price increase.

c. In late 2007, a customer issued a tender for shipments of vehicles from Europe to the United States, executives from MOL and "K" Line discussed the tender and agreed to request a price increase from the customer.

d. In late 2007 and early 2008, executives from MOL, NYK Line, and "K" Line met multiple times to try to obtain a 10% price increase for Vehicle Carrier Services. For example, Mr Kusunose of NYK Line and MOL Executive 2 met in November 2007 and agreed to increase pricing for Vehicle Carrier Services in 2008. They also agreed to convince "K" Line to increase its rates. The following month MOL Executive 1 and Mr. Kato of NYK Line had dinner at a restaurant in Tokyo and discussed seeking price increases in 2008. On or about January 11,

2008, MOL Executive 1 and Mr Kato had lunch with "K" Line Executive 1 and agreed to a goal of a 5% increase in 2008. On or about January 22, 2008, MOL Executive 2, Mr. Kusunose (of NYK Line), and "K" Line Executive 3 agreed on a target of a 10% price increase for 2008, they further agreed that each of the three companies would approach its principal customers and initially ask for a 10% price increase for Vehicle Carrier Services. In March 2008, MOL Executive 2, Mr. Kusunose (of NYK Line), and "K" Line Executive 5 met and discussed the 2008 price increase. MOL, NYK Line, and "K" Line then proceeded to approach their customers as agreed, and they obtained price increases.

e. In fall 2008, MOL Executive 3, NYK Line Executive 4, and "K" Line Executive 4 communicated and agreed to seek a certain price increase for Vehicle Carrier Services. These executives further agreed that NYK Line and "K" Line would share a customer's business from Japan to the west coast of the United States, and that NYK Line, "K" Line, and MOL would share the customer's business from Japan to the east coast of the United States.

f. In November 2011, executives from MOL and HAL met for dinner and discussed and agreed upon Vehicle Carrier Services rates from New York to West Africa, a route on which they both offered service.

59 Respondents' agreements to fix, raise, or artificially maintain the price of Vehicle Carrier Services resulted in artificially high prices paid by Complainants and Class Members for Vehicle Carrier Services on shipments to and from the United States during the Class Period.

60. The agreements described above were never filed with the Commission and never became effective under the Shipping Act.

61 During the Class Period, the FMC did not approve, modify, or amend the rates charged by Respondents for Vehicle Carrier Services for shipments to and from the United States.

Respondents Agreed Not to Compete for Customers for Vehicle Carrier Services

62. In addition to their communications and agreements to control or reduce capacity and to fix, raise, or artificially maintain the price of Vehicle Carrier Services, throughout the Class Period, Respondents met periodically and agreed not to compete for customers for Vehicle Carrier Services. The following are some examples.

a. In 2001, MOL and HAL agreed to allocate the transportation of vehicles from the United States to the Middle East. MOL was not the incumbent and wanted this business. Executives from MOL and HAL discussed and agreed that HAL would not bid in exchange for MOL agreeing to use HAL vessels on the route if it won the business. MOL won the business and then used HAL's vessels, as agreed.

b. In 2001 or 2002, MOL, WWL, and NYK Line agreed to not compete to transport a customer's vehicles from the United States to Japan. At the time, MOL was the incumbent, and MOL asked WWL to not compete with MOL when the customer issued a tender MOL told NYK Line what it planned to bid for the business and asked NYK Line to bid a higher amount. Both WWL and NYK Line agreed to do as MOL requested.

c. In 2002 or 2003, MOL, WWL, and HAL agreed to allocate a customer's business. After the customer issued a tender for transporting its vehicles from Europe to the United States, executives from MOL approached executives from WWL about the customer's business from Thailand to Europe. WWL was the incumbent on the

route from Europe to the United States, and MOL wanted to obtain the business from Thailand to Europe. MOL and WWL agreed that MOL would not compete for WWL's route from Europe to the United States, and in exchange, WWL would not compete with MOL in MOL's attempt to obtain the Thailand to Europe business. In furtherance of this agreement, WWL gave MOL a price to bid as part of the tender for Europe to the United States. Similarly, MOL and Mr Ervik of HAL agreed that HAL would not compete with MOL in MOL's attempt to obtain the Thailand to Europe business, and in exchange MOL would not compete for HAL's business on routes from the United States to Africa and the Middle East.

d. In 2004, MOL and WWL agreed to not compete for each other's business with respect to two customers. MOL and WWL agreed that WWL would not compete with MOL for MOL business in the transport of one of the customer's vehicles from South Africa to the United States, and in exchange MOL would not compete for WWL's business in the transport of both customers' vehicles from Europe to the United States.

e. In 2008 or 2009, MOL and "K" Line agreed to not compete for a customer's business. MOL was the incumbent for transporting that customer's vehicles from the United States to South Africa. Mr Tsugi of "K" Line agreed that "K" Line would bid a higher rate than MOL did for this business, and in exchange Mr. Ito of MOL agreed to not compete for "K" Line's business from the United States to Brazil and Argentina.

f. In 2010, CSAV and MOL agreed that MOL would not compete for CSAV's business to transport a customer's vehicles from the United States to Colombia

from 2010 to 2012, in furtherance of this agreement, CSAV gave MOL a price to bid.

g. In February or March of 2012, MOL Executive 4 and WWL Executive 2 met in person and agreed that MOL would not compete for WWL's business transporting vehicles from the United States to China, and in exchange, WWL would not pursue business transporting a customer's vehicles from the United States to Korea. In furtherance of this agreement, WWL gave MOL a price to bid on the United States to China route, and MOL gave WWL a price to bid on the United States to Korea route.

h. In August 2011, MOL, NYK Line, and "K" Line agreed to allocate the shipment of a customer's trucks and buses from Japan to the United States. All three companies were incumbent carriers on the route, with NYK Line having the largest share. They agreed what amount of business each company would seek and at what rates. They further agreed that if any of the three companies did not obtain the specified business, the others would share some of the business that they won. NYK Line coordinated the agreement between the companies and provided each with the rates to bid.

63. Respondents' agreements to not compete for customers' business resulted in artificially high prices paid by Complainants and Class Members for Vehicle Carrier Services on shipments to and from the United States during the Class Period.

64 The agreements described above were never filed with the Commission and never became effective under the Shipping Act.

Government Investigations Targeting Respondents

65. United States, Canadian, Japanese, and EU competition authorities have initiated a global, coordinated antitrust investigation concerning the unlawful conspiracy alleged in this Complaint. To date, Respondents CSAV, "K" Line Japan, and NYK Japan have pled guilty to criminal violations of the Federal antitrust laws for their involvement in the conspiracy, and several of their executives have pled guilty or been indicted. The JFTC has also issued cease and desist orders targeted at the conspiracy to Respondents NYK Line, "K" Line, WWL, and NMCC.

66. A grand jury has been convened in Baltimore, Maryland to investigate alleged anticompetitive conduct involving Vehicle Carrier Services and has issued subpoenas to certain of the Respondents.

67 On or about February 27, 2014, the DOJ filed a criminal Information charging that, beginning as early as January 2000, CSAV conspired to suppress and eliminate competition by allocating customers and routes, rigging bids, and fixing prices for Vehicle Carrier Services to and from the United States and elsewhere in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1

68. The criminal Information against CSAV further states that, during the relevant period, CSAV and its co-conspirators attended meetings and engaged in communications regarding bids and tenders in which they agreed to allocate customers by not competing for each other's existing business for certain customers on certain routes; they agreed to not compete against each other on certain tenders by not bidding or agreeing to the prices they would bid on such tenders; they discussed and exchanged prices so as to not undercut each other's pricing on certain tenders; they submitted bids in accordance with agreements reached; and they provided RoRo services at collusive and non-competitive prices.

69 In a plea agreement dated February 27, 2014, CSAV agreed to plead guilty to Sherman Act violations, and agreed to pay an $8.9 million fine. CSAV and the United States further agreed that "[i]n light of the civil cases filed against the defendant,[2] which potentially provide for a recovery of multiple actual damages, the recommended sentence does not include a restitution order for the offense charged in the Information."

70. On or about March 18, 2014, the JFTC issued cease and desist orders and fines against NYK Line, "K" Line, WWL, and NMCC.

71 On September 26, 2014, the DOJ filed a criminal Information charging that, beginning as early as February 1997, "K" Line Japan conspired to suppress and eliminate competition by allocating customers and routes, rigging bids, and fixing prices for Vehicle Carrier Services to and from the United States and elsewhere in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1

72. In a plea agreement dated September 26, 2014, "K" Line Japan agreed to plead guilty to Sherman Act violations and agreed to pay a $67 7 million fine. "K" Line Japan and the United States further agreed that "[i]n light of the civil cases filed against the defendant, which potentially provide for a recovery of multiple actual damages, the recommended sentence does not include a restitution order for the offence charged in the Information."

73 On December 29, 2014, the DOJ filed a criminal Information charging that, beginning as early as February 1997, NYK Japan conspired to suppress and eliminate competition by allocating customers and routes, rigging bids, and fixing prices for Vehicle Carrier Services to and from the United States and elsewhere in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1

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2 Described below

74 In a plea agreement dated December 29, 2014, NYK Japan agreed to plead guilty to Sherman Act violations and to pay a $59 4 million fine. NYK Japan and the United States further agreed that "[i]n light of the civil cases filed against the defendant, which potentially provide for a recovery of multiple actual damages, the recommended sentence does not include a restitution order for the offence charged in the Information."

75 On January 30, 2015, a former "K" Line Japan manager in the car carrier division of "K" Line Japan, Hiroshige Tanioka, agreed to plead guilty to Sherman Act violations and to accept an 18-month prison sentence and a $20,000 fine.

76. On February 6, 2015, a former "K" Line Japan executive, Takashi Yamaguchi (a former general manager and executive officer in "K" Line Japan's car carrier division), agreed to plead guilty to Sherman Act violations and to accept a 14-month prison sentence and a $20,000 fine.

77 On March 9, 2015, a former general manager of the NYK Japan car carrier division, Susumu Tanaka, agreed to plead guilty to Sherman Act violations and to accept a 15-month prison sentence and a $20,000 fine.

78. On March 26, 2015, a former general manager of the car carrier planning group of "K" Line Japan, Toru Otoda, agreed to plead guilty to Sherman Act violations and to accept an 18-month prison sentence and a $20,000 fine.

79 On October 6, 2015, the DOJ indicted three former executives of Respondents – Yoshiyuki Aoki, who held various senior management positions with "K" Line Japan, and Masahiro Kato and Shunichi Kusunose, who held senior management positions with NYK Japan – for conspiring to fix prices and suppress competition in the market for Vehicle Carrier Services in violation of the Sherman Act.

80. Respondent MOL made an application under the DOJ's Corporate Leniency Policy, and was conditionally accepted into the leniency program. The DOJ has "a policy of according leniency to corporations reporting their illegal antitrust activity at an early stage, if they meet certain conditions." As a condition of its application, MOL agreed to report price-fixing activity and/or other conduct potentially violative of Section 1 of the Sherman Act, 15 U.S.C. § 1, in the Vehicle Carrier Services industry

The Multi-District Civil Litigation

81 On May 24, 2013, F Ruggiero & Sons, Inc. and Robert O'Rourke filed a complaint in the United States District Court for the District of New Jersey on behalf of themselves and a proposed class of indirect purchasers of Vehicle Carrier Services ("Indirect Purchasers"). This was the first of a number of complaints filed on behalf of individuals, entities, and prospective classes thereof, harmed by the conduct underlying this Complaint, including end payors, automobile dealers, and direct purchasers of Vehicle Carrier Services ("Direct Purchasers"). The first Direct Purchaser class action complaint was filed on August 9, 2013 in the United States District Court for the District of New Jersey, and Complainants ITM and Cargo Agents filed class action complaints in that court on behalf Direct Purchasers on August 30, 2013 and October 11, 2013, respectively The Direct Purchaser complaints alleged that Respondents engaged in a combination or conspiracy to restrain trade in violation of Section 1 of the Sherman Act, 15 U.S.C § 1

82. On October 8, 2013, the Judicial Panel on Multi-District Litigation selected the United States District Court for the District of New Jersey as the transferee court for all coordinated or consolidated pretrial proceedings in the MDL. The cases were consolidated and coordinated under the caption *In re Vehicle Carrier Services Antitrust Litigation*, Master Docket No. 13-3306 (ES), MDL No. 2471

83 In negotiating their respective criminal plea agreements, Respondents CSAV, "K" Line and NYK Japan represented to the United States District Court for the District of Maryland that restitution need not be a part of their criminal plea agreements (described above) because of the civil litigation pending in the District of New Jersey In spite of this, on October 13, 2014, all Respondents moved to dismiss the Direct Purchaser civil action, arguing, *inter alia*, that only the FMC had jurisdiction over the Direct Purchaser Plaintiffs' claims.

84 On August 28, 2015, Judge Esther Salas of the District of New Jersey dismissed the Complainants' class action on behalf of Direct Purchasers. Judge Salas found that the Direct Purchasers were barred from bringing a private antitrust suit in federal court for the conduct alleged in the action by 46 U.S.C. § 40307(d).

85. Complainants have appealed Judge Salas's decision to the United States Court of Appeals for the Third Circuit, but the appeal has not yet been briefed.

RESPONDENTS' CONSPIRACY RESULTED IN HIGHER PRICES FOR PURCHASERS OF VEHICLE CARRIER SERVICES

86. As a result of their unlawful contract, combination, or conspiracy, Respondents succeeded in restricting output and fixing, raising, maintaining, or stabilizing prices for Vehicle Carrier Services charged throughout the world, including shipments to and from the United States.

87 Respondents' agreements to reduce capacity and increase prices in 2008 affected all direct purchasers of Vehicle Carrier Services, including for shipments to or from the United States.

88. By agreeing to fix, raise, or artificially maintain prices of Vehicle Carrier Services, Respondents fixed, raised, maintained, or stabilized prices charged to all direct

purchasers, including for shipments to and from the United States, even where a particular agreement may have been made with respect to some customers.

89 Complainants and the other Class members have been injured in their business and property because they have paid more for Vehicle Carrier Services than they would have paid in a competitive market.

90. Respondents' unlawful contract, combination, or conspiracy has had at least the following effects:

a. Competition for Vehicle Carrier Services has been restrained,

b. Prices paid by Complainants and the members of the Class for Vehicle Carrier Services were fixed, stabilized, or maintained at supra-competitive levels throughout the world, including prices paid for Vehicle Carrier Services to and from the United States;

c. Customers and markets for Vehicle Carrier Services were allocated among Respondents and their co-conspirators;

d. Price competition regarding the sale of Vehicle Carrier Services was restrained, suppressed, or eliminated throughout the world, including for shipments to and from the United States, thus raising the prices of Vehicle Carrier Services above what they would have been absent Respondents' actions; as a result, Complainants and the other members of the Class paid more for Vehicle Carrier Services than they would have paid in a competitive marketplace;

e. Direct purchasers of Vehicle Carrier Services have been deprived of the benefits of free and open competition, and

f. As a direct and proximate result of the unlawful combination, contract or conspiracy, Complainants and the members of the Class have been injured and financially damaged in their businesses and property, in amounts to be determined.

91 The effects of Respondents' unlawful conduct are supported by economic data. Pricing for Vehicle Carrier Services is correlated with time charter rates and time charter rates can serve as a rough proxy for contemporaneous Vehicle Carrier Service rates charged by Respondents and their co-conspirators. An examination of time charter rates published by broker R.S. Platou shows that after a decade of relatively flat PCTC charter rates from 1990-2000, rates began to increase substantially in 2001 Between 2001 and 2008, R.S. Platou data show that rates increascd by approximately 150 percent. This rate increase cannot be explained by normal market forces such as increased demand or increased costs:

a. Demand for Vehicle Carrier Services increased only modestly during this time period. According to the United States International Trade Commission, U.S imports and exports of automobiles increased by 24 percent from 2001 to 2008 (3 percent a year on average), far less than the 150 percent reported increase in PCTC charter rates (almost 20 percent a year on average); and

b. Increases in prices for Vehicle Carrier Services far outpaced any increases in expenses during the same period.

92. As explained in paragraph 54, *supra*, demand for Vehicle Carrier Services fell dramatically in late 2008 as a result of the worldwide financial crisis, and Respondents jointly responded to this drop in demand by agreeing to scrap and layup a substantial number of vessels, and then implementing those agreements. In addition, Respondents continued to conspire to

allocate customers and markets, rig bids, and fix, raise, or artificially maintain prices for Vehicle Carrier Services. As a result of these various anticompetitive acts, prices for Vehicle Carrier Services began rising steadily starting in 2009 at a rate that cannot be explained or justified by fuel costs or demand.

93. Respondents' conduct throughout the Class Period resulted in artificially high prices for Vehicle Carrier Services charged throughout the world, including shipments to and from the United States, and as a result Complainants and Class Members paid more for Vehicle Carrier Services than they would have absent Respondents' unlawful conduct.

FRAUDULENT CONCEALMENT

94 Conspiracies to fix prices, rig bids, and allocate customers and markets are, by their very nature, inherently self-concealing. If a conspiracy is to be successful at fixing prices, the participants must ensure that customers do not discover the existence of the conspiracy

95. Respondents' acts in furtherance of the conspiracy were concealed and carried out in a manner specifically designed to avoid detection. Complainants and members of the Class did not discover and could not have discovered the alleged contract, conspiracy, or combination at an earlier date by the exercise of reasonable diligence.

96. Because Respondents' agreements, understandings, or conspiracies were kept secret, Complainants and members of the Class were unaware of Respondents' unlawful conduct alleged in this Complaint, and they did not know that they were paying supra-competitive prices for Vehicle Carrier Services during the Class Period.

97 None of the facts or information available to Complainants and members of the Class, if investigated with reasonable diligence, would have led to the discovery of hard facts

clearly demonstrating the existence and effects of the conspiracy alleged in this Complaint during the Class Period.

98. Moreover, Respondents affirmatively concealed their conspiracy by falsely claiming that the Vehicle Carrier Services market was competitive and by creating the illusion that prices were rising as a result of increased demand and tight supply For example, Respondents stated:

a. "For our customers, quality services at a competitive cost are the essence of excellence." Mitsui O.S.K. Lines, Ltd. Annual Report 2000, at 9

b "Market prospects for 2003 are characterised by a high degree of both political and economic uncertainty The year as a whole is expected to show relatively weak economic growth and reduced demand for vehicles in some of the world's principal regions." Wilh. Wilhelmsen ASA Annual Report 2002, at 11

c. "Developments in the car carrier and ro-ro markets are of major importance to both Wallenius Wilhelmsen Lines and EUKOR. This business will continue to make the biggest contribution to the group's results. Both liner and car carrier operations are affected by general trends in the world economy" Wilh. Wilhelmsen ASA Annual Report 2002, at 15

d. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity" CSAV Annual Report 2003, at 10.

e. "CSAV participates in a very competitive market in which variations in global economic growth directly affect demand for cargo transport." *Id.* at 23.

f. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity" CSAV Annual Report 2005, at 19.

g. "CSAV participates in a very competitive market in which variations in global economic growth directly affect demand for cargo transport." *Id.* at 42.

h. "Car sales and demand for vehicle transport are expected to remain buoyant. The tight market for car shipments is accordingly expected to continue in 2005, even with the relatively large number of new car carriers due to be delivered during the year " Wilh. Wilhelmsen ASA Annual Report 2004, at 9

i. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity " CSAV Annual Report 2006, at 15

j. "CSAV participates in a highly competitive market in which demand for cargo transport is directly affected by fluctuations in global economic growth." *Id.* at 149

k. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity " CSAV Annual Report 2007, at 15.

l. "CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport." *Id.* at 39

m. "The 'K' Line Group is doing business in all international markets, and is involved in competition with many shipping companies at home and abroad." "K" Line Annual Report 2008, at 55.

n. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity " CSAV Annual Report 2008, at 17

o. "CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport." *Id.* at 35.

p. "The 'K' Line Group promises to comply with applicable laws, ordinances, rules and spirit of the international community and conduct its corporate activities through fair, transparent and free competition." "K" Line Annual Report 2009, at 1

q. "Global automobile marine transport volume was robust through the middle of 2008, resulting in a severe shortage of vessels in the marine transport market, a market in which prices are based on the relationship between supply and demand. As a result, shipping rates were on the increase." NYK Annual Report 2009, at 8.

r. "Demand for ocean transportation of ro-ro cargo to Oceania remained at low levels through the year, while car volumes rose in the latter half of the year Trades involving emerging markets such as China, South America, India and Africa offered relatively healthy volumes through most of the year, although fierce competition put significant pressure on rates." Wilh. Wilhelmsen ASA Annual Report 2009, at 11

s. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity" CSAV Annual Report 2009, at 17

t. "CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport." *Id.* at 36.

u. "Through its capital intensity and cyclical nature, the shipping segment has historically represented higher volatility and financial risk than maritime services. The car/ro-ro shipping has during the recent history also represented the single largest investment area and exposure for the group and its shareholders Demand for transportation of cars and other cargo has improved significantly,

primarily during the second half of the year, and combined with better mix of cargo types this has positively affected the profitability of the fleet." Wilh. Wilhelmsen ASA Annual Report 2010, at 19-20.

v "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity " CSAV Annual Report 2010, at 15

w "CSAV works in a very competitive market, in which variations in global economic growth directly affect the demand for cargo transport." *Id.* at 35

x. "The results of the car-carrying services were severely affected by the fall in global demand seen in 2011 [a]dded to the weak global demand for car carriers and the consequent under-utilization of ships was a sharp rise in oil prices." CSAV Annual Report 2011, at 22.

y "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity " CSAV Annual Report 2011, at 15

z. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity " *Id.* at 19

aa. "In addition to Japanese marine transport operators, the NYK Group competes with international shipping companies operating throughout the globe, and the competitive situation is growing more intense." NYK Annual Report 2012, at 102.

99 Moreover, Respondents were required by 46 U.S.C. § 40302(a) to file with the Commission any agreements to: discuss, fix, or regulate transportation rates, pool or apportion traffic, revenues, earnings or losses; regulate the volume or character of cargo to be carried; engage in an exclusive, preferential or cooperative working agreement between themselves; or

control, regulate, or prevent competition in international ocean transportation. By failing to file such agreements with the Commission, Defendants further concealed their anti-competitive conspiracy from Complainants and Class members.

100. Thus, Respondents and their co-conspirators engaged in a successful anti-competitive conspiracy concerning Vehicle Carrier Services, which they affirmatively concealed.

101 By reason of the foregoing, the statute of limitations with respect to the claims that Complainants have alleged in this Complaint did not begin to run until Complainants had all the hard facts necessary to be fully aware of the conspiracy alleged herein and its negative effects on their businesses.

102. Further, the statute of limitations was tolled by the filing of class action complaints in the District of New Jersey; at latest, this tolling began August 9, 2013, when the first Direct Purchaser class action complaint was filed.

CLASS ACTION ALLEGATIONS

103. FMC Rule of Practice and Procedure 12 states that "[i]n proceedings under this part, for situations which are not covered by a specific Commission rule, the Federal Rules of Civil Procedure will be followed to the extent they are consistent with sound administrative practice." 46 C.F.R. § 502.12. As the FMC has noted, "Rule 23 of the Federal Rules of Civil Procedure provides the mechanism by which a class action can be undertaken" before the FMC.[3]

104 Complainants brings this action on behalf of themselves and as a class action under the provisions of Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following Class (the "Class"):

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[3] *See Mar-Mol Co. and Copycorp. v. Sea-Land Service, Inc.*, Docket No. 95-11, 1997 WL 400991 (FMC June 5. 1997), at *8.

> All persons and entities that purchased Vehicle Carrier Services for shipments to or from the United States directly from any of the Respondents or any current or former predecessor, subsidiary, or affiliate of each, at any time during the period from February 1, 1997 to December 31, 2012. This Class excludes all federal, state, governmental, and national entities and Respondents and their respective predecessors, subsidiaries, affiliates, and business partners.

105 Complainants believe that there are thousands of Class members located throughout the entire United States, the exact number, location, and identities of which are known by Respondents, making the Class so numerous and geographically dispersed that joinder of all members is impracticable.

106. There are numerous questions of law and fact common to the Class, which questions relate to the existence of the conspiracy alleged, and the type and common pattern of injury sustained as a result thereof, including, but not limited to:

a. Whether Respondents and their co-conspirators engaged in a combination and conspiracy among themselves to reduce capacity, allocate markets for, or fix, raise, maintain, or stabilize the prices of, Vehicle Carrier Services for shipments to and from the United States;

b. The identity of the participants of the conspiracy;

c. The duration of the conspiracy and the nature and character of the acts performed by Respondents and their agents and co-conspirators in furtherance of the conspiracy;

d. Whether the alleged conspiracy violated the Shipping Act, including 46 U.S.C. §§ 40302(a), 41102(b)(1), 41102(c), 41104(10), 41105, and 46 CFR § 535.401 *et seq.*,

e. Whether the conduct of Respondents and their co-conspirators, as alleged in this Complaint, caused injury to the business or property of the Complainants and the other members of the Class;

f. Whether the Respondents and their co-conspirators fraudulently concealed the conspiracy's existence from the Complainants and the other members of the Class;

g. The effect of the conspiracy on the prices of Vehicle Carrier Services for shipments to and from the United States during the Class Period; and

h. The appropriate class-wide measure of damages.

107 Complainants are direct purchasers of Vehicle Carrier Services and their interests are coincident with and not antagonistic to those of the other members of the Class. Complainants are members of the Class, have claims that are typical of the claims of the Class Members, and will fairly and adequately protect the interests of the members of the Class. In addition, Complainants are represented by counsel who are competent and experienced in the prosecution of antitrust and class action litigation.

108. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications.

109 The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

110. A class action is superior to other available methods for the fair and efficient adjudication of this controversy Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously,

efficiently and without duplication of effort and expense that numerous individual actions would engender The Class is readily identifiable through the files of Respondents, and prosecution as a class action will eliminate the possibility of repetitious litigation. Class treatment will also permit the adjudication of relatively small claims by many Class members who otherwise could not afford to litigate the claims asserted in this Complaint. This class action presents no difficulties of management that would preclude its maintenance as a class action.

VIOLATIONS OF THE SHIPPING ACT AND COMMISSION REGULATIONS

111 By reason of the facts stated in paragraphs 1 to 110 of this Complaint, which are incorporated by reference as if fully set forth herein, Complainants and members of the proposed Class have been and are continuing to be subjected to injury as a direct result of violations of the Shipping Act as follows:

A. 46 U.S.C. § 40302(a)

112. Respondents and their agents and co-conspirators entered into and engaged in agreements of the types enumerated in 46 U.S.C. § 40301(a), including an agreement and/or agreements "between or among ocean common carries" to, *inter alia*:

- discuss, fix, or regulate transportation rates;
- pool or apportion traffic, revenues, earnings or losses;
- regulate the volume or character of cargo to be carried;
- engage in an exclusive, preferential or cooperative working agreement between themselves, and
- control, regulate, or prevent competition in international ocean transportation.

113 Respondents' agreement(s) between and among themselves to restrain trade by reducing capacity, allocating customers and routes, rigging bids, and otherwise raising, fixing,

stabilizing, or maintaining prices for Vehicle Carrier Services for shipments to and from the United States, caused anticompetitive effects.

114 Any such agreements between and among Respondents were required to be filed with the FMC under 46 U.S.C. § 40302(a). Respondents willfully avoided or failed to file any such agreement with the FMC.

115 By failing to file their anticompetitive agreements with the FMC, Respondents violated 46 U.S.C. § 40302(a).

B. 46 U.S.C. § 41102(b)

116. By operating under agreements required to be filed with the FMC under § 40302(a), and that were not filed with the FMC, and that, therefore, had not become "effective" under 46 U.S.C. § 40304, Respondents engaged in conduct prohibited by 46 U.S.C. § 41102(b)(1).

C. 46 C.F.R. § 535.401 *et seq.*

117 By failing to file with the FMC their agreements to restrain trade by reducing capacity, allocating customers and routes, rigging bids, and otherwise raising, fixing, stabilizing, or maintaining prices for Vehicle Carrier Services for shipments to and from the United States, Respondents violated the FMC's regulations supporting the Shipping Act requirements for the filing of agreements.

D. 46 U.S.C. § 41102(c)

118. Beginning at a time unknown to Complainants, but at least as early as February 1, 1997, and continuing at least through the end of the Class Period, Respondents failed to establish, observe and enforce just and reasonable regulations and practices relating to receiving, handling, storing or delivering property Respondents and their co-conspirators violated 46

U.S.C. § 41102(c) through their intentional conduct designed to unreasonably interfere with the international transportation of property by Complainants and by members of the proposed Class.

E. 46. U.S.C. § 41105

119 Collectively, Respondents constitute a "conference or group of two or more common carriers."

120 By engaging in the conduct alleged in this Complaint, Respondents engaged in behavior prohibited by 46 U.S.C. § 41105, including, *inter alia*:

- taking concerted action that resulted in an unreasonable refusal to deal with Complainants and other members of the proposed class,
- engaging in conduct that unreasonably restricted the use of intermodal services;
- denying in the export foreign commerce of the United States compensation to ocean freight forwarders, or limiting that compensation to less than a reasonable amount; and
- allocating shippers among specific carriers that were parties to an agreement, in a manner not authorized by 46 U.S.C. 40303(d).

F. 46 U.S.C. § 41104(10)

121 Beginning at a time unknown to Complainants, but at least as early as February 1, 1997, and continuing through at least the end of the Class Period, Respondents and their co-conspirators violated this section through their concerted action resulting in an unreasonable refusal to deal and negotiate. In allocating customers – such as Complainants – every Respondent or co-conspirator that agreed, in deference to their co-conspirators, not to pursue the respective Complainants' and proposed Class members' business and not to pursue

Complainants and proposed Class members as customers thereby unreasonably refused to deal or negotiate in good faith.

INJURY SUFFERED BY COMPLAINANTS AND THE PROPOSED CLASS

122. As a result of the facts alleged in the foregoing paragraphs, Complainants and members of the proposed Class have been harmed by being forced to pay inflated, supra-competitive prices for Vehicle Carrier Services.

123 Complainants and proposed Class members' injuries are a direct result of Respondents' violations of 46 U.S.C. §§ 40302(a), 41102(b)(1), 41102(c), 41104(10), 41105, and 46 CFR § 535.401 *et seq.*

124 Respondents' unfiled anticompetitive agreements involved United States domestic commerce and import commerce, and had a direct, substantial, and foreseeable effect on United States commerce by raising and fixing prices for Vehicle Carrier Services for shipments to and from the United States.

125. In formulating and carrying out the alleged agreement, Respondents and their co-conspirators did those things that they combined and conspired to do, including but not limited to the acts, practices, and course of conduct set forth in this Complaint.

126. Respondents' conspiracy had the following effects, among others:

a. Price competition for Vehicle Carrier Services has been restrained, suppressed, or eliminated for shipments to and from the United States;

b. Prices for Vehicle Carrier Services sold by Respondents, their divisions, subsidiaries, and affiliates have been fixed, raised, stabilized, and maintained at artificially high, non-competitive levels for shipments to and from the United States; and

c. Complainants and members of the Class who purchased Vehicle Carrier Services from Respondents, their divisions, subsidiaries, and affiliates have been deprived of the benefits of free and open competition.

127 As a direct and proximate result of Respondents' anticompetitive conduct, Complainants and members of the Class have been injured in their business or property by paying more for Vehicle Carrier Services than they would have paid in the absence of the conspiracy

PRAYER FOR RELIEF

WHEREFORE, Complainants pray for relief as follows:

a) That the Respondents be required to answer the charges herein,

b) That the Commission certify this action as a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure and that Complainants be deemed adequate representatives of the Class;

c) That, after due investigation and hearing, Respondents be found to have violated 46 U.S C. §§ 40302(a), 41102(b)(1), 41102(c), 41104(10), 41105, and 46 CFR § 535 401 *et seq.*,

d) That the Commission order Respondents to cease and desist from violating the Shipping Act, including the above-specified provisions thereof;

e) That Complainants and the Class recover reparations in a sum to be proven under 46 U.S.C. § 41305, with interest (46 U.S.C. § 41305(a));

f) That Complainants and the Class members recover their costs of the suit, including reasonable attorneys' fees as provided by 46 U.S.C. § 41305(e);

g) That Complainants and the Class be awarded up to double their proven actual injury under 46 U.S.C. § 41305(c) because Respondents and their co-conspirators violated 46 U.S.C. § 41102(b) and § 41105(1) and (3);

h) That Respondents be found jointly and severally liable for the conduct alleged herein, including that of their co-conspirators; and

i) That the Commission direct further relief as it may deem just and proper

Dated: December 29, 2015

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Counsel for Complainants

VERIFICATION

Patrick
~~Peter~~ Costin, being first duly sworn on oath deposes and states that he is President of RCL Agencies, Inc., and that he has read the foregoing Complaint, and the facts stated therein he believes to be true on information and belief and upon information received from others.

Date 12/10/15

Signed

SUSANNA PILLOT
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 4/27/2019

VERIFICATION

WOLFGANG SCHMID, being first duly sworn on oath deposes and states that he is Vice President of International Transport Management, Corp; that he has read the foregoing Complaint and that the facts stated therein he believes to be true on information and belief and upon information received from others.

Date: 12/01/2015

Wolfgang Schmid

Wolfgang Schmid, Vice President

Subscribed and sworn to before me on
this 2 day of Dec, 2015.

Notary Public

Amrithavalli Murali
Notary Public
New Jersey
My Commission Expires 7-30-19
ID No. 2388018

VERIFICATION

Jose Donado, being first duly sworn on oath deposes and states that he is President of Cargo Agents, Inc., that he has read the foregoing Complaint and that the facts stated therein he believes to be true on information and belief and upon information received from others.

Date: December 3, 2015

Jose Donado

Jose Donado
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